Clerk's Stamp:

COURT FILE NUMBER:	2401-02680
COURT:	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE:	CALGARY
APPLICANTS: **(Respondents on Application)**	IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF RAZOR ENERGY CORP., RAZOR HOLDINGS GP CORP., AND BLADE ENERGY SERVICES CORP.
DOCUMENT:	**AUTHORITIES OF ALBERTA PETROLEUM MARKETING COMMISSION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Shores Jardine LLP Barristers and Solicitors 2250, 10104 – 103 Avenue Edmonton, Alberta T5J 0H8 William W. Shores, K.C. Telephone: 780-448-9275 Facsimile: 780-423-0163 File No. 2352-00005 WWS

AUTHORITIES OF ALBERTA PETROLEUM MARKETING COMMISSION

For the Application scheduled for April 10, 2024 at 10:00 am

Table of Authorities

Legislation

1. *Natural Resources Transfer Agreement*, 1930 (Alberta) (Schedule of Constitution Act, 1930, R.S.C. 1985, App. II, No. 26)
2. *Constitution Act,* 1867
3. *Mines and Minerals Act*, R.S.A. 2000, c. M-17
4. *Petroleum Royalty Regulation,* 2009, AR 22/2008
5. *Petroleum Royalty Regulation*, 2017, AR 212/2016
6. *Petroleum Marketing Act,* RSA 2000, c. P-10
7. *Petroleum Marketing Regulation,* AR 174/2006
8. *Oil Sands Royalty Regulation*, AR 223/2008
9. *Companies' Creditors Arrangement Act*, RSC, 1985, c C-36
10. *Bankruptcy and Insolvency Act,* RSC, 1985, c B-3

Case Law and Secondary Sources

11. Peter W Hogg, "Constitutional Law of Canada, 5th Edition" online: (WL Can) Thomson Reuters Canada
12. *Excel Energy Inc. v. Alberta,* 196 AR 67 (CA)
13. *Carter v Long & Bisby,* 1896 CanLII 18 (SCC), 26 SCR 430
14. Janis Sarra, Geoffrey B. Morawetz, L.W. Houlden, "The 2022-2023 Annotated Bankruptcy and Insolvency Act", Carswell, 2023
15. *Newfoundland and Labrador v. AbitibiBowater Inc.,* 2012 SCC 67
16. *Orphan Wells Association v. Grant Thornton Ltd.,* 2019 SCC 5
17. *Quicksilver Resources Canada Inc (Re)*, 2018 ABQB 653
18. *8640025 Canada Inc. (Re),* 2017 BCCA 303
19. *PanAmericana de Bienes y Servicios v. Northern Badger Oil & Gas Limited*, 81 DLR (4th) 280 (1991)

CANADA

CONSOLIDATION

CODIFICATION

Alberta Natural Resources Act

Loi des ressources naturelles de l'Alberta

S.C. 1930, c. 3

S.C. 1930, ch. 3

Current to March 6, 2024

À jour au 6 mars 2024

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

This consolidation is current to March 6, 2024. Any amendments that were not in force as of March 6, 2024 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 6 mars 2024. Toutes modifications qui n'étaient pas en vigueur au 6 mars 2024 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

TABLE OF PROVISIONS

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Loi concernant le transfert des ressources naturelles de l'Alberta

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ANNEXE

S.C. 1930, c. 3

An Act respecting the transfer of the Natural Resources of Alberta

[*Assented to 30th May 1930*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short title

1 This Act may be cited as *The Alberta Natural Resources Act*.

Agreement confirmed / Proviso

2 The agreement set out in the schedule hereto is hereby approved, subject to the proviso that, in addition to the rights accruing hereunder to the province of Alberta, the said province shall be entitled to such further rights, if any, with respect to the subject matter of the said agreement as are required to be vested in the said province in order that it may enjoy rights equal to those which may be conferred upon or reserved to the province of Saskatchewan under any agreement upon a like subject matter hereafter approved and confirmed in the same manner as the said agreement.

S.C. 1930, ch. 3

Loi concernant le transfert des ressources naturelles de l'Alberta

[*Sanctionnée le 30 mai 1930*]

Sa Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète :

Titre abrégé

1 La présente loi peut être citée sous le titre : *Loi des ressources naturelles de l'Alberta*.

Convention ratifiée

2 La convention énoncée à l'Annexe de la présente loi est par les présentes approuvée, sous la réserve que, outre les droits attribués ci-après à la province de l'Alberta, ladite province doit jouir de tous autres droits, s'il en est, concernant le sujet de ladite convention, dont il pourra être nécessaire d'investir ladite province afin qu'elle puisse jouir de droits égaux à ceux qui peuvent être conférés ou réservés à la province de la Saskatchewan en vertu de toute convention sur un sujet semblable dorénavant approuvée et ratifiée de la même manière que pour ladite convention.

SCHEDULE

Memorandum of Agreement made this fourteenth day of December, 1929,

BETWEEN

THE GOVERNMENT OF THE DOMINION OF CANADA, represented herein by the Honourable Ernest Lapointe, Minister of Justice, and the Honourable Charles Stewart, Minister of the Interior,

Of the first part,

AND

THE GOVERNMENT OF THE PROVINCE OF ALBERTA, represented herein by the Honourable John Edward Brownlee, Premier of Alberta, and the Honourable George Hoadley, Minister of Agriculture and Health,

Of the second part.

[*]Whereas by section twenty-one of *The Alberta Act*, being chapter three of four and five Edward the Seventh, it was provided that "All Crown lands, mines and minerals and royalties incident thereto, and the interest of the Crown in the waters within the province under *The North-west Irrigation Act, 1898*, shall continue to be vested in the Crown and administered by the Government of Canada for the purposes of Canada, subject to the provisions of any Act of the Parliament of Canada with respect to road allowances and roads or trails in force immediately before the coming into force of this Act, which shall apply to the said province with the substitution therein of the said province for the North-west Territories";

[*] [Note: Act in force on assent May 30, 1930.]

And Whereas it is desirable that the Province should be placed in a position of equality with the other provinces of Confederation with respect to the administration and control of its natural resources as from its entrance into Confederation in 1905;

And Whereas it has been agreed between Canada and the said Province that the provisions of *The Alberta Act* should be modified as herein set out;

Now Therefore This Agreement Witnesseth:

Transfer of Public Lands Generally

1 In order that the Province may be in the same position as the original Provinces of Confederation are in virtue of section one hundred and nine of the *British North America Act, 1867*, the interest of the Crown in all Crown lands, mines, minerals (precious and base) and royalties derived therefrom within the Province and the interest of the Crown in the waters and water-powers within the Province under the *Northwest Irrigation Act, 1898*, and the *Dominion Water Power*

ANNEXE

Mémorandum de la Convention conclue ce quatorzième jour de décembre 1929,

ENTRE

LE GOUVERNEMENT DU DOMINION DU CANADA, représenté aux présentes par l'honorable Ernest Lapointe, ministre de la Justice, et l'honorable Charles Stewart, ministre de l'Intérieur,

d'une part;

ET

LE GOUVERNEMENT DE LA PROVINCE DE L'ALBERTA, représenté aux présentes par l'honorable John Edward Brownlee, premier ministre de l'Alberta, et l'honorable George Hoadley, ministre de l'Agriculture et de la Santé,

d'autre part.

[*]Considérant que, par l'article vingt et un de l'*Acte de l'Alberta*, chapitre trois de quatre et cinq Edouard VII, il a été prévu que « Les terres fédérales, mines et minéraux et les redevances qui s'y rattachent, ainsi que les droits de la Couronne sur les eaux comprises dans les limites de la province sous l'empire de l'*Acte d'irrigation du Nord-Ouest, 1898*, continuent d'être la propriété de la Couronne et sous l'administration du gouvernement du Canada pour le Canada, sauf les dispositions de tout acte du Parlement du Canada, relatives aux réserves pour chemins et aux chemins ou trails, et telles qu'en vigueur immédiatement avant l'entrée en vigueur de la présente loi, lesquelles s'appliqueront à ladite province et comporteront substitution de ladite province aux territoires du Nord-Ouest »;

[*] [Note : Loi en vigueur à la sanction le 30 mai 1930.]

Et considérant qu'il est avantageux que la province soit traitée à l'égal des autres provinces de la Confédération quant à l'administration et au contrôle de ses ressources naturelles, à dater de son entrée dans la Confédération en 1905;

Et considérant qu'il a été entendu entre le Canada et ladite province que les dispositions de l'*Acte de l'Alberta* devraient être modifiées telles qu'énoncées aux présentes;

À ces causes, la présente convention fait foi :

Transfert des terres publiques en général

1 Afin que la province puisse être traitée à l'égal des provinces constituant originairement la Confédération, sous le régime de l'article cent neuf de l'*Acte de l'Amérique britannique du Nord, 1867*, l'intérêt de la Couronne dans toutes les terres, toutes les mines, tous les minéraux (précieux et vils) et toutes les redevances en découlant à l'intérieur de la province ainsi que l'intérêt de la Couronne dans les eaux et les forces hydrauliques à l'intérieur de la province, visées par l'*Acte*

Act, and all sums due or payable for such lands, mines, minerals or royalties, or for interests or rights in or to the use of such waters or water-powers, shall, from and after the coming into force of this agreement and subject as therein otherwise provided, belong to the Province, subject to any trusts existing in respect thereof, and to any interest other than that of the Crown in the same, and the said lands, mines, minerals and royalties shall be administered by the Province for the purposes thereof, subject, until the Legislature of the Province otherwise provides, to the provisions of any Act of the Parliament of Canada relating to such administration; any payment received by Canada in respect of any such lands, mines, minerals or royalties before the coming into force of this agreement shall continue to belong to Canada whether paid in advance or otherwise, it being the intention that, except as herein otherwise specially provided, Canada shall not be liable to account to the Province for any payment made in respect of any of the said lands, mines, minerals or royalties before the coming into force of this agreement, and that the Province shall not be liable to account to Canada for any such payment made thereafter.

d'irrigation du Nord-Ouest, 1898, et par la *Loi des forces hydrauliques du Canada*, qui appartiennent à la Couronne, et toutes les sommes dues ou payables pour ces mêmes terres, mines, minéraux ou redevances, ou pour les intérêts dans l'utilisation de ces eaux ou forces hydrauliques ou pour les droits y afférents, doivent, à compter de l'entrée en vigueur de la présente convention, et sous réserve des dispositions contraires de la présente convention appartenir à la province, subordonnément à toutes les fiducies existant à leur égard et à tout intérêt autre que celui de la Couronne dans ces ressources naturelles, et ces terres, mines, minéraux et redevances seront administrés par la province pour ces fins, sous réserve, jusqu'à ce que l'Assemblée législative de la province prescrive autrement, des dispositions de toute loi rendue par le Parlement du Canada concernant cette administration; tout payement reçu par le Canada à l'égard de ces terres, mines, minéraux ou redevances avant que la présente convention soit exécutoire continue d'appartenir au Canada, qu'il soit payé d'avance ou autrement, l'intention de la présente convention étant que, sauf dispositions contraires spécialement prévues aux présentes, le Canada ne soit pas obligé de rendre compte à la province d'un payement effectué à l'égard de ces terres, mines, minéraux ou redevances, avant la mise en vigueur de la présente convention, et que la province ne soit pas obligée de rendre compte au Canada d'un pareil payement effectué postérieurement à la présente convention.

2 The Province will carry out in accordance with the terms thereof every contract to purchase or lease any Crown lands, mines or minerals and every other arrangement whereby any person has become entitled to any interest therein as against the Crown, and further agrees not to affect or alter any term of any such contract to purchase, lease or other arrangement by legislation or otherwise, except either with the consent of all the parties thereto other than Canada or in so far as any legislation may apply generally to all similar agreements relating to lands, mines or minerals in the Province or to interests therein, irrespective of who may be the parties thereto or is legislation relating to the conservation of oil resources or gas resources or both by the control or regulation of the production of oil or gas or both, whether by restriction or prohibition and whether generally or with respect to any specified area or any specified well or wells or by repressuring of any oil field, gas field or oil-gas field, and, incidentally thereto, providing for the compulsory purchase of any well or wells.

2 La province, d'accord avec les conditions stipulées aux présentes, exécutera tout contrat d'achat ou de location de terres, mines ou minéraux de la Couronne et tout autre arrangement en vertu duquel une personne a été investie d'un intérêt dans les susdits à l'encontre de la Couronne, et elle convient en outre de ne porter aucune atteinte ni apporter aucune modification à l'une quelconque des conditions de ce contrat d'achat ou de location, ou d'un autre arrangement, par législation ou autrement, sauf du consentement de toutes les parties à ce contrat ou arrangement autre que le Canada ou en tant qu'une législation puisse s'appliquer généralement à toute convention semblable relative aux terres, mines ou minéraux de la province, ou à un intérêt dans les susdits, sans égard à quiconque peut y être partie, ou qu'elle constitue une législation sur la conservation des ressources de pétrole ou de gaz, ou des deux, par le contrôle ou la réglementation de la production de pétrole ou de gaz, ou des deux, soit par restriction ou interdiction, et soit généralement ou concernant quelque région déterminée ou un ou plusieurs puits spécifiés, ou par le rétablissement de la presssion dans un champ de pétrole ou de gaz, ou dans un champ de gaz de pétrole, et, accessoirement, prévoyant l'achat obligatoire d'un ou plusieurs puits.

3 Any power or right, which, by any such contract, lease or other arrangement, or by any Act of the parliament of Canada relating to any of the lands, mines, minerals or royalties hereby transferred or by any regulation made under any such Act, is reserved to the Governor in Council or to the Minister of the Interior or any other officer of the Government of Canada, may be exercised by such officer of the Government of the Province as may, be specified by the Legislature thereof from time to time and until otherwise directed, may be exercised by the Provincial Secretary of the Province.

3 Tout pouvoir ou droit qui, par un contrat, bail ou autre arrangement, ou par une loi du Parlement du Canada se rapportant aux terres, mines, minéraux ou redevances par les présentes transférés, ou par un règlement établi sous l'empire de cette loi, est réservé au gouverneur en son conseil ou au ministre de l'Intérieur ou à tout autre fonctionnaire du gouvernement du Canada, peut être exercé par le fonctionnaire du gouvernement de la province qui, à l'occasion, peut être désigné par la législature de cette dernière, et, à moins d'ordres contraires, peut être exercé par le secrétaire provincial de la province.

4 The Province will perform every obligation of Canada arising by virtue of the provisions of any statute or order in council or regulation in respect of the public lands to be administered by it hereunder to any person entitled to a grant of

4 La province devra satisfaire à toute obligation du Canada résultant des dispositions de quelque loi, arrêté en conseil ou règlement concernant les terres publiques qu'il est tenu d'administrer de ce chef, envers toute personne ayant droit à une

lands by way of subsidy for the construction of railways or otherwise or to any railway company for grants of lands for right of way, road bed, stations, station grounds, work-shops, buildings, yards, ballast pits or other appurtenances.

5 The Province will further be bound by and will, with respect to any lands or interests in lands to which the Hudson's Bay Company may be entitled, carry out the terms and conditions of the Deed of Surrender from the said Company to the Crown as modified by the *Dominion Lands Act* and the Agreement dated the 23rd day of December, 1924, between His Majesty and the said Company, which said Agreement was approved by Order in Council dated the 19th day of December, 1924 (P.C. 2158), and in particular the Province will grant to the Company any lands in the Province which the Company may be entitled to select and may select from the lists of lands furnished to the Company by the Minister of the Interior under and pursuant to the said Agreement of the 23rd day of December, 1924, and will release and discharge the reservation in patents referred to in clause three of the said agreement, in case such release and discharge has not been made prior to the coming into force of this agreement. Nothing in this agreement, or in any agreement varying the same as hereinafter provided, shall in any way prejudice or diminish the rights of the Hudson's Bay Company or affect any right to or interest in land acquired or held by the said Company pursuant to the Deed of Surrender from it to the Crown, the *Dominion Lands Act* or the said Agreement of the 23rd day of December, 1924.

School Lands Fund and School Lands

6 Upon the coming into force of this agreement, Canada will transfer to the Province the money or securities constituting that portion of the school lands fund, created under sections twenty-two and twenty-three of *The Act to amend and consolidate the several Acts respecting Public Lands of the Dominion*, being chapter thirty-one of forty-two Victoria, and subsequent statutes, which is derived from the disposition of any school lands within the Province or within that part of the Northwest Territories now included within the boundaries thereof.

7 The School Lands Fund to be transferred to the Province as aforesaid, and such of the school lands specified in section thirty-seven of the *Dominion Lands Act*, being chapter one hundred and thirteen of the Revised Statutes of Canada, 1927, as pass to the administration of the Province under the terms hereof, shall be set aside and shall continue to be administered by the Province in accordance, *mutatis mutandis*, with the provisions of sections thirty-seven to forty of the *Dominion Lands Act*, for the support of schools organized and carried on therein in accordance with the law of the Province. The Province will, notwithstanding anything in this Agreement, invest money to which this paragraph applies in securities of Canada, or of a Province, or of a municipal corporation, school district or school division in the Province of Alberta, or in securities guaranteed by Canada or a Province, to form a school fund, and will apply the interest arising

concession de terrains par voie de subvention pour la construction de chemins de fer ou autrement, ou envers une compagnie de chemin de fer, à l'égard de concessions de terrains pour emprises, terrassements, gares, terrains de station, ateliers, bâtiments, parcs, carrières de ballast ou autres dépendances.

5 À l'égard de tous terrains ou intérêts dans ces terrains auxquels la compagnie de la Baie d'Hudson peut avoir droit, la province sera tenue, en outre, d'exécuter les termes et conditions de l'acte de cession par ladite compagnie à la Couronne, tel que modifié par la *Loi des terres fédérales* et la Convention en date du 23e jour de décembre 1924, entre Sa Majesté et ladite compagnie, laquelle convention a été approuvée par arrêté en conseil en date du 19e jour de décembre 1924 (C.P. 2158), et, en particulier, la province concédera à la compagnie les terrains situés dans la province que la compagnie peut avoir le droit de choisir et qu'elle peut choisir sur les listes des terrains fournies à la compagnie par le ministre de l'Intérieur, en vertu et en conformité de ladite convention du 23e jour de décembre 1924, et elle se libérera et se déchargera des patentes réservées dont il est question dans la clause trois de ladite convention, au cas où cette libération et cette décharge n'auraient pas été effectuées avant l'entrée en vigueur de la présente convention. Rien dans la présente convention ni dans toute convention qui la modifie conformément aux dispositions qui suivent, ne doit d'aucune manière porter atteinte aux droits de la compagnie de la Baie d'Hudson ni les diminuer, ni toucher à un droit ou intérêt dans un terrain acquis ou détenu par ladite compagnie, en conformité de l'acte de cession par elle à la Couronne, de la *Loi des terres fédérales* ou de ladite convention du 23e jour de décembre 1924.

Terres des écoles et caisse des terres des écoles

6 Dès l'entrée en vigueur de la présente convention, le Canada transportera à la province les fonds ou valeurs qui constituent la partie de la caisse des terres des écoles, créée sous l'autorité des articles vingt-deux et vingt-trois de l'*Acte à l'effet d'amender et refondre les divers actes concernant les terres publiques fédérales*, chapitre trente et un de quarante-deux Victoria, et des statuts subséquents, qui provient de l'aliénation des terres des écoles situées dans la province ou dans cette partie des territoires du Nord-Ouest maintenant comprise dans les limites de ladite province.

7 La caisse des terres des écoles à transférer à la province comme susdit et les terres des écoles mentionnées à l'article trente-sept de la *Loi des terres fédérales*, chapitre cent treize des Statuts revisés du Canada, 1927, qui passent sous l'administration de la province en vertu des conditions stipulées aux présentes, doivent être mises de côté et continuer d'être administrées par la province, d'accord, *mutatis mutandis*, avec les dispositions des articles trente-sept à quarante de la *Loi des terres fédérales*, pour subvenir aux écoles y organisées et administrées conformément à la loi de la province. Nonobstant toute disposition de la présente convention, la province placera les deniers visés par la présente clause en valeurs du Canada, ou d'une province, ou d'une corporation municipale, d'un district ou division scolaire dans la province d'Alberta, ou en valeurs garanties par le Canada ou une province, pour constituer une caisse d'écoles, et en affectera les intérêts,

CANADA

A Consolidation of

THE CONSTITUTION ACTS 1867 to 1982

Current to January 1, 2021

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Codification administrative des

LOIS CONSTITUTIONNELLES DE 1867 à 1982

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FOREWORD

Layout

The presentation of this codification and the accompanying notes follow, to the extent possible, the basic principles related to formatting legislative enactments that were put in place in January 2016. For certain elements particular to constitutional enactments that have no equivalent in other consolidated statutes, it was decided to draw upon the presentation of these enactments in their previously published form.

Consolidation

This consolidation contains the text of the *Constitution Act, 1867* (formerly the *British North America Act, 1867*), together with amendments made to it since its enactment, and the text of the *Canada Act 1982* and the *Constitution Act, 1982*, as amended since its enactment. The *Constitution Act, 1982* contains the *Canadian Charter of Rights and Freedoms* and other provisions, including the rights of Indigenous peoples and the procedures for amending the Constitution of Canada.

The *Constitution Act, 1982* also contains a schedule of repeals of certain constitutional enactments and provides for the renaming of others. The *British North America Act, 1949*, for example, is renamed as the *Newfoundland Act*. The new names of these enactments are used in this consolidation, but their former names may be found in the schedule.

The *Constitution Act, 1982* was enacted as Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.). It is set out in this consolidation as a separate Act after the *Constitution Act, 1867* and the *Canada Act 1982*.

French Version

The French version of the *Constitution Act, 1867* set out herein is the conventional translation. It does not have the force of law since this Act was enacted by the Parliament of the United Kingdom in English only.

Section 55 of the *Constitution Act, 1982* provides that a "French version of the portions of the Constitution of Canada referred to in the schedule [to that Act] shall be prepared by the Minister of Justice of Canada as expeditiously as possible". The French Constitutional Drafting Committee was established in 1984 with a mandate to assist the Minister of Justice in that task. The Committee's

AVANT-PROPOS

Mise en page

La présentation de cette codification et des notes qui s'y rapportent suit dans la mesure du possible les principes de la mise en page des textes législatifs adoptée en janvier 2016. Pour les éléments particuliers à ces textes constitutionnels qui n'ont pas leur équivalent dans les autres lois codifiées, des décisions ont été prises quant à la présentation inspirées de l'apparence des textes dans les recueils où ils ont été publiés à l'origine.

Codification

La présente codification contient le texte de la *Loi constitutionnelle de 1867* (antérieurement l'*Acte de l'Amérique du Nord britannique, 1867*), avec les modifications apportées depuis son adoption, le texte de la *Loi de 1982 sur le Canada* ainsi que celui de la *Loi constitutionnelle de 1982* avec les modifications qui lui ont été apportées depuis son adoption. La *Loi constitutionnelle de 1982* renferme la *Charte canadienne des droits et libertés* et d'autres dispositions, notamment les droits des peuples autochtones et les procédures de modification de la Constitution du Canada.

De plus, l'annexe de la *Loi constitutionnelle de 1982* abroge certains textes constitutionnels et modifie le titre d'autres textes. Par exemple, l'*Acte de l'Amérique du Nord britannique, 1949* est devenu la *Loi sur Terre-Neuve*. Ce sont ces nouveaux titres qui figurent dans la présente codification. Quant aux anciens titres, ils figurent à l'annexe de la *Loi constitutionnelle de 1982*.

La *Loi constitutionnelle de 1982* a été adoptée comme annexe B de la *Loi de 1982 sur le Canada*, 1982, ch. 11 (R.-U.). Elle est toutefois présentée dans la présente codification comme loi distincte, après cette dernière loi et la *Loi constitutionnelle de 1867*.

Version française

La présente version française de la *Loi constitutionnelle de 1867* n'est qu'une traduction donnée à titre documentaire. Elle n'a pas force de loi puisque cette loi a été adoptée par le Parlement du Royaume-Uni en anglais seulement.

L'article 55 de la *Loi constitutionnelle de 1982* prévoit que le « ministre de la Justice du Canada est chargé de rédiger, dans les meilleurs délais, la version française des parties de la Constitution du Canada qui figurent à l'annexe [de cette loi] ». Le comité de rédaction constitutionnelle française a été créé en 1984 pour appuyer

Final Report, which contains forty-two constitutional enactments, was tabled by the Minister in both Houses of Parliament in December 1990. Another office consolidation prepared by the Department of Justice and presented on this site is based on the French version of the *Constitution Act, 1867* that was drafted by the Committee.

Amendment of the Constitution Act, 1867

The law embodied in the *Constitution Act, 1867* has been altered many times otherwise than by textual amendment, not only by the Parliament of the United Kingdom but also by the Parliament of Canada and the legislatures of the provinces in those cases where provisions of that Act are expressed to be subject to alteration by Parliament or the legislatures. A consolidation of the Constitution Acts including only those subsequent enactments that alter the text of the Act would therefore not produce a true statement of the law. In preparing this consolidation, an attempt has been made to reflect accurately the substance of the law contained in enactments modifying the provisions of the *Constitution Act, 1867*, whether by textual amendment or otherwise.

The various classes of enactments modifying the *Constitution Act, 1867* have been dealt with as follows:

I. Textual Amendments

1. Repeals

Repealed provisions (e.g. section 2) have been deleted from the text and quoted in an endnote.

2. Amendments

Amended provisions (e.g. section 4) are reproduced in the text in their amended form and the original provisions are quoted in an endnote.

3. Additions

Added provisions (e.g. section 51A) are included in the text.

4. Substitutions

Substituted provisions (e.g. section 18) are included in the text and the former provision is quoted in an endnote.

II. Non-textual Amendments

1. Alterations by United Kingdom Parliament

Provisions altered by the United Kingdom Parliament otherwise than by textual amendment (e.g. section 21)

le ministre dans cette mission. Le ministre de la Justice a déposé le rapport définitif du comité, comprenant quarante-deux textes constitutionnels, devant les deux chambres du Parlement en décembre 1990. Une autre codification administrative préparée par le ministère de la Justice et présentée sur ce site est fondée sur la version française rédigée par ce comité.

Modifications apportées à la Loi constitutionnelle de 1867

La *Loi constitutionnelle de 1867* a subi plusieurs modifications non textuelles, non seulement de la part du Parlement du Royaume-Uni, mais aussi, dans les cas où elle le permettait, de la part du Parlement du Canada et des législatures provinciales. Ces modifications ont été incluses en plus des modifications faites au texte original afin de donner tout l'état de la loi. La présente codification a donc pour objet de reproduire exactement la substance de la législation contenue dans tous les textes qui ont modifié les dispositions de la *Loi constitutionnelle de 1867*, par des modifications textuelles ou autres.

La méthodologie appliquée aux diverses catégories de dispositions qui ont modifié la *Loi constitutionnelle de 1867* est présentée ci-dessous.

I. Modifications textuelles

1. Abrogations

Les dispositions abrogées — l'article 2, par exemple — ont été retranchées du texte et sont citées dans une note en fin de texte.

2. Modifications

Les dispositions modifiées — l'article 4, par exemple — sont reproduites dans le texte sous leur nouvelle forme et les dispositions originales sont citées dans une note en fin de texte.

3. Adjonctions

Les dispositions ajoutées — l'article 51A, par exemple — ont été incluses dans le texte.

4. Substitutions

Les dispositions substituées — l'article 18, par exemple — ont été incluses dans le texte et les anciennes dispositions sont citées dans une note en fin de texte.

II. Modifications non textuelles

1. Changements apportés par le Parlement du Royaume-Uni

are included in the text in their altered form and the original provision is quoted in an endnote.

2. Additions by United Kingdom Parliament

Constitutional provisions added otherwise than by the insertion of additional provisions in the *Constitution Act, 1867* (e.g. provisions of the *Constitution Act, 1871* authorizing Parliament to legislate for any territory not included in a province) are not incorporated in the text but the additional provisions are quoted in an appropriate endnote.

3. Alterations by Parliament of Canada

Provisions subject to alteration by the Parliament of Canada (e.g. section 37) have been included in the text in their altered form, wherever possible, but where this was not feasible (e.g. section 40) the original section has been retained in the text and an endnote reference made to the Act of the Parliament of Canada effecting the alteration.

4. Alterations by the Legislatures

Provisions subject to alteration by the legislatures of the provinces, either by virtue of specific authority (e.g. sections 83 and 84) or by virtue of former head 1 of section 92 (e.g. sections 70 and 72), have been included in the text in their original form but the endnotes refer to the provincial enactments effecting the alteration. Amendments to the provincial enactments are not noted; these may be found by consulting the provincial statutes. In addition, only the enactments of the original provinces are referred to; corresponding enactments by the provinces that were created at a later date are not noted.

Spent Provisions

Endnote references are made to those sections that are spent or probably spent. For example, section 119 became spent by lapse of time and the endnote reference indicates this. In turn, section 140 is probably spent, but short of examining all statutes passed before Confederation there would be no way of ascertaining definitely whether or not the section is spent; the endnote reference therefore indicates that the section is probably spent.

Les dispositions que le Parlement du Royaume-Uni a changées autrement que par modification textuelle — l'article 21, par exemple — ont été incluses dans le texte sous leur nouvelle forme et les dispositions originales sont citées dans une note en fin de texte.

2. Adjonctions effectuées par le Parlement du Royaume-Uni

Les dispositions constitutionnelles ajoutées autrement que par des adjonctions à la *Loi constitutionnelle de 1867* — par exemple, les dispositions de la *Loi constitutionnelle de 1871* autorisant le Parlement à légiférer pour tout territoire non compris dans une province — ne sont pas incorporées au texte, mais sont citées dans une note en fin de texte.

3. Changements apportés par le Parlement du Canada

Les dispositions pouvant être modifiées par le Parlement du Canada — l'article 37, par exemple — ont été incluses dans le texte sous leur nouvelle forme, chaque fois que possible; dans le cas contraire — l'article 40, par exemple — le texte conserve l'article original avec, dans une note en fin de texte, un renvoi à la loi du Parlement du Canada qui a effectué le changement.

4. Changements apportés par les législatures

Les dispositions pouvant être modifiées par les législatures provinciales en vertu d'une autorisation expresse — les articles 83 et 84, par exemple — ou en vertu de l'ancien paragraphe 1 de l'article 92 — comme les articles 70 et 72, par exemple — ont été incluses dans le texte sous leur forme originale. Les renvois dans les notes en fin de texte portent sur les dispositions législatives provinciales à l'origine de ces changements. Toutefois, les modifications dont ces dispositions législatives provinciales ont été l'objet n'ont pas été incluses; on peut en prendre connaissance en consultant les lois des provinces. En outre, ces renvois ne se rapportent qu'aux dispositions législatives des quatre premières provinces. Les textes similaires adoptés par les provinces créées après 1867 ne sont pas inclus.

Dispositions périmées

Certains renvois dans les notes en fin de texte se rapportent aux articles périmés ou probablement périmés. Ainsi, l'article 119 est devenu périmé avec le temps, ce qu'indique le renvoi. Par ailleurs, l'article 140 est probablement périmé, mais il faudrait examiner toutes les lois adoptées avant la Confédération pour en être absolument certain; c'est la raison pour laquelle le renvoi dans la note en fin de texte signale que cet article est probablement périmé.

General

The enactments of the United Kingdom Parliament and the Parliament of Canada, and Orders in Council admitting territories, that are referred to in the endnotes may be found in Appendix II of the Appendices to the Revised Statutes of Canada, 1985 and in the annual volumes of the Statutes of Canada.

There are some inconsistencies in the capitalization of nouns in the English version. It was originally the practice to capitalize the first letter of all nouns in British statutes and the *Constitution Act, 1867* was so written, but this practice was discontinued and was never followed in Canadian statutes. In the original provisions included in this consolidation, nouns are written as they were enacted.

Généralités

Les dispositions adoptées par le Parlement du Royaume-Uni ou par le Parlement du Canada ainsi que les décrets portant admission de territoires, mentionnés dans les notes en fin de texte, sont inclus dans l'appendice II des Appendices des Lois révisées du Canada (1985) et dans les volumes annuels des Lois du Canada.

4. Nova Scotia and New Brunswick

Constitutions of Legislatures of Nova Scotia and New Brunswick

88 The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act.(42)

5. Ontario, Quebec, and Nova Scotia

89 Repealed.(43)

6. The Four Provinces

Application to Legislatures of Provisions respecting Money Votes, etc.

90 The following Provisions of this Act respecting the Parliament of Canada, namely, — the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved, — shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in Terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada.

VI. Distribution of Legislative Powers

Powers of the Parliament

Legislative Authority of Parliament of Canada

91 It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

4. Nouvelle-Écosse et Nouveau-Brunswick

Constitution des législatures de la Nouvelle-Écosse et du Nouveau- Brunswick

88 La constitution de la législature de chacune des provinces de la Nouvelle-Écosse et du Nouveau-Brunswick continuera, sujette aux dispositions de la présente loi, d'être celle en existence à l'époque de l'union, jusqu'à ce qu'elle soit modifiée sous l'autorité de la présente loi.(42)

5. Ontario, Québec et Nouvelle-Écosse

89 Abrogé.(43)

6. Les quatre provinces

Application aux législatures des dispositions relatives aux crédits, etc.

90 Les dispositions suivantes de la présente loi, concernant le parlement du Canada, savoir : — les dispositions relatives aux bills d'appropriation et d'impôts, à la recommandation de votes de deniers, à la sanction des bills, au désaveu des lois, et à la signification du bon plaisir quant aux bills réservés, — s'étendront et s'appliqueront aux législatures des différentes provinces, tout comme si elles étaient ici décrétées et rendues expressément applicables aux provinces respectives et à leurs législatures, en substituant toutefois le lieutenant-gouverneur de la province au gouverneur-général, le gouverneur-général à la Reine et au secrétaire d'État, un an à deux ans, et la province au Canada.

VI. Distribution des pouvoirs législatifs

Pouvoirs du parlement

Autorité législative du parlement du Canada

91 Il sera loisible à la Reine, de l'avis et du consentement du Sénat et de la Chambre des Communes, de faire des lois pour la paix, l'ordre et le bon gouvernement du Canada, relativement à toutes les matières ne tombant pas dans les catégories de sujets par la présente loi exclusivement assignés aux législatures des provinces; mais, pour plus de garantie, sans toutefois restreindre la généralité des termes ci-haut employés dans le présent article, il est par la présente déclaré que (nonobstant toute disposition contraire énoncée dans la présente loi) l'autorité législative exclusive du parlement du Canada s'étend à

1. Repealed.(44)

1A. The Public Debt and Property.(45)

2. The Regulation of Trade and Commerce.

2A. Unemployment insurance.(46)

3. The raising of Money by any Mode or System of Taxation.

4. The borrowing of Money on the Public Credit.

5. Postal Service.

6. The Census and Statistics.

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

9. Beacons, Buoys, Lighthouses, and Sable Island.

10. Navigation and Shipping.

11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

12. Sea Coast and Inland Fisheries.

13. Ferries between a Province and any British or Foreign Country or between Two Provinces.

14. Currency and Coinage.

15. Banking, Incorporation of Banks, and the Issue of Paper Money.

16. Savings Banks.

17. Weights and Measures.

18. Bills of Exchange and Promissory Notes.

19. Interest.

20. Legal Tender.

21. Bankruptcy and Insolvency.

22. Patents of Invention and Discovery.

23. Copyrights.

24. Indians, and Lands reserved for the Indians.

25. Naturalization and Aliens.

26. Marriage and Divorce.

27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects

toutes les matières tombant dans les catégories de sujets ci-dessous énumérés, savoir :

1. Abrogé.(44)

1A. La dette et la propriété publiques.(45)

2. La réglementation du trafic et du commerce.

2A. L'assurance-chômage.(46)

3. Le prélèvement de deniers par tous modes ou systèmes de taxation.

4. L'emprunt de deniers sur le crédit public.

5. Le service postal.

6. Le recensement et les statistiques.

7. La milice, le service militaire et le service naval, et la défense du pays.

8. La fixation et le paiement des salaires et honoraires des officiers civils et autres du gouvernement du Canada.

9. Les amarques, les bouées, les phares et l'île de Sable.

10. La navigation et les bâtiments ou navires (*shipping*).

11. La quarantaine et l'établissement et maintien des hôpitaux de marine.

12. Les pêcheries des côtes de la mer et de l'intérieur.

13. Les passages d'eau (*ferries*) entre une province et tout pays britannique ou étranger, ou entre deux provinces.

14. Le cours monétaire et le monnayage.

15. Les banques, l'incorporation des banques et l'émission du papier-monnaie.

16. Les caisses d'épargne.

17. Les poids et mesures.

18. Les lettres de change et les billets promissoires.

19. L'intérêt de l'argent.

20. Les offres légales.

21. La banqueroute et la faillite.

22. Les brevets d'invention et de découverte.

23. Les droits d'auteur.

24. Les Indiens et les terres réservées pour les Indiens.

25. La naturalisation et les aubains.

26. Le mariage et le divorce.

by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.(47)

Exclusive Powers of Provincial Legislatures

Subjects of exclusive Provincial Legislation

92 In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed.(48)

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3. The borrowing of Money on the sole Credit of the Province.

4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.

9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

27. La loi criminelle, sauf la constitution des tribunaux de juridiction criminelle, mais y compris la procédure en matière criminelle.

28. L'établissement, le maintien, et l'administration des pénitenciers.

29. Les catégories de sujets expressément exceptés dans l'énumération des catégories de sujets exclusivement assignés par la présente loi aux législatures des provinces.

Et aucune des matières énoncées dans les catégories de sujets énumérés dans le présent article ne sera réputée tomber dans la catégorie des matières d'une nature locale ou privée comprises dans l'énumération des catégories de sujets exclusivement assignés par la présente loi aux législatures des provinces.(47)

Pouvoirs exclusifs des législatures provinciales

Sujets soumis au contrôle exclusif de la législation provinciale

92 Dans chaque province la législature pourra exclusivement faire des lois relatives aux matières tombant dans les catégories de sujets ci-dessous énumérés, savoir :

1. Abrogé.(48)

2. La taxation directe dans les limites de la province, dans le but de prélever un revenu pour des objets provinciaux;

3. Les emprunts de deniers sur le seul crédit de la province;

4. La création et la tenure des charges provinciales, et la nomination et le paiement des officiers provinciaux;

5. L'administration et la vente des terres publiques appartenant à la province, et des bois et forêts qui s'y trouvent;

6. L'établissement, l'entretien et l'administration des prisons publiques et des maisons de réforme dans la province;

7. L'établissement, l'entretien et l'administration des hôpitaux, asiles, institutions et hospices de charité dans la province, autres que les hôpitaux de marine;

8. Les institutions municipales dans la province;

9. Les licences de boutiques, de cabarets, d'auberges, d'encanteurs et autres licences, dans le but de prélever un revenu pour des objets provinciaux, locaux, ou municipaux;

10. Local Works and Undertakings other than such as are of the following Classes:

(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

(b) Lines of Steam Ships between the Province and any British or Foreign Country:

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

10. Les travaux et entreprises d'une nature locale, autres que ceux énumérés dans les catégories suivantes :

a) Lignes de bateaux à vapeur ou autres bâtiments, chemins de fer, canaux, télégraphes et autres travaux et entreprises reliant la province à une autre ou à d'autres provinces, ou s'étendant au-delà des limites de la province;

b) Lignes de bateaux à vapeur entre la province et tout pays dépendant de l'empire britannique ou tout pays étranger;

c) Les travaux qui, bien qu'entièrement situés dans la province, seront avant ou après leur exécution déclarés par le parlement du Canada être pour l'avantage général du Canada, ou pour l'avantage de deux ou d'un plus grand nombre des provinces;

11. L'incorporation des compagnies pour des objets provinciaux;

12. La célébration du mariage dans la province;

13. La propriété et les droits civils dans la province;

14. L'administration de la justice dans la province, y compris la création, le maintien et l'organisation de tribunaux de justice pour la province, ayant juridiction civile et criminelle, y compris la procédure en matières civiles dans ces tribunaux;

15. L'infliction de punitions par voie d'amende, pénalité, ou emprisonnement, dans le but de faire exécuter toute loi de la province décrétée au sujet des matières tombant dans aucune des catégories de sujets énumérés dans le présent article;

16. Généralement toutes les matières d'une nature purement locale ou privée dans la province.

Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

Laws respecting non-renewable natural resources, forestry resources and electrical energy

92A (1) In each province, the legislature may exclusively make laws in relation to

(a) exploration for non-renewable natural resources in the province;

(b) development, conservation and management of non-renewable natural resources and forestry re-

Ressources naturelles non renouvelables, ressources forestières et énergie électrique

Compétence provinciale

92A (1) La législature de chaque province a compétence exclusive pour légiférer dans les domaines suivants :

a) prospection des ressources naturelles non renouvelables de la province;

b) exploitation, conservation et gestion des ressources naturelles non renouvelables et des ressources fores-

sources in the province, including laws in relation to the rate of primary production therefrom; and

(c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.

tières de la province, y compris leur rythme de production primaire;

c) aménagement, conservation et gestion des emplacements et des installations de la province destinés à la production d'énergie électrique.

Export from provinces of resources

(2) In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

Exportation hors des provinces

(2) La législature de chaque province a compétence pour légiférer en ce qui concerne l'exportation, hors de la province, à destination d'une autre partie du Canada, de la production primaire tirée des ressources naturelles non renouvelables et des ressources forestières de la province, ainsi que de la production d'énergie électrique de la province, sous réserve de ne pas adopter de lois autorisant ou prévoyant des disparités de prix ou des disparités dans les exportations destinées à une autre partie du Canada.

Authority of Parliament

(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.

Pouvoir du Parlement

(3) Le paragraphe (2) ne porte pas atteinte au pouvoir du Parlement de légiférer dans les domaines visés à ce paragraphe, les dispositions d'une loi du Parlement adoptée dans ces domaines l'emportant sur les dispositions incompatibles d'une loi provinciale.

Taxation of resources

(4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

(a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and

(b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

Taxation des ressources

(4) La législature de chaque province a compétence pour prélever des sommes d'argent par tout mode ou système de taxation :

a) des ressources naturelles non renouvelables et des ressources forestières de la province, ainsi que de la production primaire qui en est tirée;

b) des emplacements et des installations de la province destinés à la production d'énergie électrique, ainsi que de cette production même.

Cette compétence peut s'exercer indépendamment du fait que la production en cause soit ou non, en totalité ou en partie, exportée hors de la province, mais les lois adoptées dans ces domaines ne peuvent autoriser ou prévoir une taxation qui établisse une distinction entre la production exportée à destination d'une autre partie du Canada et la production non exportée hors de la province.

Primary production

(5) The expression ***primary production*** has the meaning assigned by the Sixth Schedule.

Production primaire

(5) L'expression ***production primaire*** a le sens qui lui est donné dans la sixième annexe.

Existing powers or rights

(6) Nothing in subsections (1) to (5) derogates from any powers or rights that a legislature or government of a

Pouvoirs ou droits existants

(6) Les paragraphes (1) à (5) ne portent pas atteinte aux pouvoirs ou droits détenus par la législature ou le

gouvernement d'une province lors de l'entrée en vigueur du présent article.[49]

Education

Legislation respecting Education

93 In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

1. Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union;

2. All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec;

3. Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education;

4. In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.[50]

Quebec

93A Paragraphs (1) to (4) of section 93 do not apply to Quebec.[51]

Éducation

Législation au sujet de l'éducation

93 Dans chaque province, la législature pourra exclusivement décréter des lois relatives à l'éducation, sujettes et conformes aux dispositions suivantes :

1. Rien dans ces lois ne devra préjudicier à aucun droit ou privilège conféré, lors de l'union, par la loi à aucune classe particulière de personnes dans la province, relativement aux écoles séparées (*denominational*);

2. Tous les pouvoirs, privilèges et devoirs conférés et imposés par la loi dans le Haut-Canada, lors de l'union, aux écoles séparées et aux syndics d'écoles des sujets catholiques romains de Sa Majesté, seront et sont par la présente étendus aux écoles dissidentes des sujets protestants et catholiques romains de la Reine dans la province de Québec;

3. Dans toute province où un système d'écoles séparées ou dissidentes existera par la loi, lors de l'union, ou sera subséquemment établi par la législature de la province — il pourra être interjeté appel au gouverneur-général en conseil de toute loi ou décision d'aucune autorité provinciale affectant aucun des droits ou privilèges de la minorité protestante ou catholique romaine des sujets de Sa Majesté relativement à l'éducation;

4. Dans le cas où il ne serait pas décrété telle loi provinciale que, de temps à autre, le gouverneur-général en conseil jugera nécessaire pour donner suite et exécution aux dispositions du présent article, — ou dans le cas où quelque décision du gouverneur-général en conseil, sur appel interjeté en vertu du présent article, ne serait pas mise à exécution par l'autorité provinciale compétente — alors et en tout tel cas, et en tant seulement que les circonstances de chaque cas l'exigeront, le parlement du Canada pourra décréter des lois propres à y remédier pour donner suite et exécution aux dispositions du présent article, ainsi qu'à toute décision rendue par le gouverneur-général en conseil sous l'autorité de ce même article.[50]

Québec

93A Les paragraphes (1) à (4) de l'article 93 ne s'appliquent pas au Québec.[51]

Transfer of Property in Schedule

108 The Public Works and Property of each Province, enumerated in the Third Schedule to this Act, shall be the Property of Canada.

Property in Lands, Mines, etc.

109 All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due or payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.[57]

Assets connected with Provincial Debts

110 All Assets connected with such Portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province.

Canada to be liable for Provincial Debts

111 Canada shall be liable for the Debts and Liabilities of each Province existing at the Union.

Debts of Ontario and Quebec

112 Ontario and Quebec conjointly shall be liable to Canada for the Amount (if any) by which the Debt of the Province of Canada exceeds at the Union Sixty-two million five hundred thousand Dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon.

Assets of Ontario and Quebec

113 The Assets enumerated in the Fourth Schedule to this Act belonging at the Union to the Province of Canada shall be the Property of Ontario and Quebec conjointly.

Debt of Nova Scotia

114 Nova Scotia shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Eight million Dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon.[58]

Debt of New Brunswick

115 New Brunswick shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Seven million Dollars, and shall be charged with

Transfert des propriétés énumérées dans l'annexe

108 Les travaux et propriétés publics de chaque province, énumérés dans la troisième annexe de la présente loi, appartiendront au Canada.

Propriété des terres, mines, etc.

109 Toutes les terres, mines, minéraux et réserves royales appartenant aux différentes provinces du Canada, de la Nouvelle-Écosse et du Nouveau-Brunswick lors de l'union, et toutes les sommes d'argent alors dues ou payables pour ces terres, mines, minéraux et réserves royales, appartiendront aux différentes provinces d'Ontario, Québec, la Nouvelle-Écosse et le Nouveau-Brunswick, dans lesquelles ils sont sis et situés, ou exigibles, restant toujours soumis aux charges dont ils sont grevés, ainsi qu'à tous intérêts autres que ceux que peut y avoir la province.[57]

Actif et dettes provinciales

110 La totalité de l'actif inhérent aux portions de la dette publique assumées par chaque province, appartiendra à cette province.

Responsabilité des dettes provinciales

111 Le Canada sera responsable des dettes et obligations de chaque province existantes lors de l'union.

Responsabilité des dettes d'Ontario et Québec

112 Les provinces d'Ontario et Québec seront conjointement responsables envers le Canada de l'excédent (s'il en est) de la dette de la province du Canada, si, lors de l'union, elle dépasse soixante-deux millions cinq cent mille piastres, et tenues au paiement de l'intérêt de cet excédent au taux de cinq pour cent par année.

Actif d'Ontario et Québec

113 L'actif énuméré dans la quatrième annexe de la présente loi, appartenant, lors de l'union, à la province du Canada, sera la propriété d'Ontario et Québec conjointement.

Dette de la Nouvelle-Écosse

114 La Nouvelle-Écosse sera responsable envers le Canada de l'excédent (s'il en est) de sa dette publique si, lors de l'union, elle dépasse huit millions de piastres, et tenue au paiement de l'intérêt de cet excédent au taux de cinq pour cent par année.[58]

Dette du Nouveau-Brunswick

115 Le Nouveau-Brunswick sera responsable envers le Canada de l'excédent (s'il en est) de sa dette publique, si lors de l'union, elle dépasse sept millions de piastres, et

Continuance of Customs and Excise Laws

122 The Customs and Excise Laws of each Province shall, subject to the Provisions of this Act, continue in force until altered by the Parliament of Canada.(61)

Exportation and Importation as between Two Provinces

123 Where Customs Duties are, at the Union, leviable on any Goods, Wares, or Merchandises in any Two Provinces, those Goods, Wares, and Merchandises may, from and after the Union, be imported from one of those Provinces into the other of them on Proof of Payment of the Customs Duty leviable thereon in the Province of Exportation, and on Payment of such further Amount (if any) of Customs Duty as is leviable thereon in the Province of Importation.(62)

Lumber Dues in New Brunswick

124 Nothing in this Act shall affect the Right of New Brunswick to levy the Lumber Dues provided in Chapter Fifteen of Title Three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the Union, and not increasing the Amount of such Dues; but the Lumber of any of the Provinces other than New Brunswick shall not be subject to such Dues.(63)

Exemption of Public Lands, etc.

125 No Lands or Property belonging to Canada or any Province shall be liable to Taxation.

Provincial Consolidated Revenue Fund

126 Such Portions of the Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick had before the Union Power of Appropriation as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the special Powers conferred upon them by this Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

IX. Miscellaneous Provisions

General

127 Repealed.(64)

Continuation des lois de douane et d'accise

122 Les lois de douane et d'accise de chaque province demeureront en force, sujettes aux dispositions de la présente loi, jusqu'à ce qu'elles soient modifiées par le parlement du Canada.(61)

Exportation et importation entre deux provinces

123 Dans le cas où des droits de douane seraient, à l'époque de l'union, imposables sur des articles, denrées ou marchandises, dans deux provinces, ces articles, denrées ou marchandises pourront, après l'union, être importés de l'une de ces deux provinces dans l'autre, sur preuve du paiement des droits de douane dont ils sont frappés dans la province d'où ils sont exportés, et sur paiement de tout surplus de droits de douane (s'il en est) dont ils peuvent être frappés dans la province où ils sont importés.(62)

Impôts sur les bois au Nouveau-Brunswick

124 Rien dans la présente loi ne préjudiciera au privilège garanti au Nouveau-Brunswick de prélever sur les bois de construction les droits établis par le chapitre quinze du titre trois des statuts revisés du Nouveau-Brunswick, ou par toute loi l'amendant avant ou après l'union, mais n'augmentant pas le chiffre de ces droits; et les bois de construction des provinces autres que le Nouveau-Brunswick ne seront pas passibles de ces droits.(63)

Terres publiques, etc., exemptées des taxes

125 Nulle terre ou propriété appartenant au Canada ou à aucune province en particulier ne sera sujette à la taxation.

Fonds consolidé du revenu provincial

126 Les droits et revenus que les législatures respectives du Canada, de la Nouvelle-Écosse et du Nouveau-Brunswick avaient, avant l'union, le pouvoir d'approprier, et qui sont, par la présente loi, réservés aux gouvernements ou législatures des provinces respectives, et tous les droits et revenus perçus par elles conformément aux pouvoirs spéciaux qui leur sont conférés par la présente loi, formeront dans chaque province un fonds consolidé de revenu qui sera approprié au service public de la province.

IX. Dispositions diverses

Dispositions générales

127 Abrogé.(64)

Oath of Allegiance, etc.

128 Every Member of the Senate or House of Commons of Canada shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.

Serment d'allégeance, etc.

128 Les membres du Sénat ou de la Chambre des Communes du Canada devront, avant d'entrer dans l'exercice de leurs fonctions, prêter et souscrire, devant le gouverneur-général ou quelque personne à ce par lui autorisée, — et pareillement, les membres du conseil législatif ou de l'assemblée législative d'une province devront, avant d'entrer dans l'exercice de leurs fonctions, prêter et souscrire, devant le lieutenant-gouverneur de la province ou quelque personne à ce par lui autorisée, — le serment d'allégeance énoncé dans la cinquième annexe de la présente loi; et les membres du Sénat du Canada et du conseil législatif de Québec devront aussi, avant d'entrer dans l'exercice de leurs fonctions, prêter et souscrire, devant le gouverneur-général ou quelque personne à ce par lui autorisée, la déclaration des qualifications énoncée dans la même annexe.

Continuance of existing Laws, Courts, Officers, etc.

129 Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland,) to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act.(65)

Les lois, tribunaux et fonctionnaires actuels continueront d'exister, etc.

129 Sauf toute disposition contraire prescrite par la présente loi, — toutes les lois en force en Canada, dans la Nouvelle-Écosse ou le Nouveau-Brunswick, lors de l'union, — tous les tribunaux de juridiction civile et criminelle, — toutes les commissions, pouvoirs et autorités ayant force légale, — et tous les officiers judiciaires, administratifs et ministériels, en existence dans ces provinces à l'époque de l'union, continueront d'exister dans les provinces d'Ontario, de Québec, de la Nouvelle-Écosse et du Nouveau-Brunswick respectivement, comme si l'union n'avait pas eu lieu; mais ils pourront, néanmoins (sauf les cas prévus par des lois du parlement de la Grande-Bretagne ou du parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande), être révoqués, abolis ou modifiés par le parlement du Canada, ou par la législature de la province respective, conformément à l'autorité du parlement ou de cette législature en vertu de la présente loi.(65)

Transfer of Officers to Canada

130 Until the Parliament of Canada otherwise provides, all Officers of the several Provinces having Duties to discharge in relation to Matters other than those coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces shall be Officers of Canada, and shall continue to discharge the Duties of their respective Offices under the same Liabilities, Responsibilities, and Penalties as if the Union had not been made.(66)

Fonctionnaires transférés au service du Canada

130 Jusqu'à ce que le parlement du Canada en ordonne autrement, — tous les officiers des diverses provinces ayant à remplir des devoirs relatifs à des matières autres que celles tombant dans les catégories de sujets assignés exclusivement par la présente loi aux législatures des provinces, seront officiers du Canada et continueront à remplir les devoirs de leurs charges respectives sous les mêmes obligations et pénalités que si l'union n'avait pas eu lieu.(66)

Appointment of new Officers

131 Until the Parliament of Canada otherwise provides, the Governor General in Council may from Time to Time appoint such Officers as the Governor General in Council

Nomination des nouveaux officiers

131 Jusqu'à ce que le parlement du Canada en ordonne autrement, — le gouverneur-général en conseil pourra

deems necessary or proper for the effectual Execution of this Act.

Treaty Obligations

132 The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

Use of English and French Languages

133 Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.(67)

de temps à autre nommer les officiers qu'il croira nécessaires ou utiles à l'exécution efficace de la présente loi.

Obligations naissant des traités

132 Le parlement et le gouvernement du Canada auront tous les pouvoirs nécessaires pour remplir envers les pays étrangers, comme portion de l'empire Britannique, les obligations du Canada ou d'aucune de ses provinces, naissant de traités conclus entre l'empire et ces pays étrangers.

Usage facultatif et obligatoire des langues française et anglaise

133 Dans les chambres du parlement du Canada et les chambres de la législature de Québec, l'usage de la langue française ou de la langue anglaise, dans les débats, sera facultatif; mais dans la rédaction des archives, procès-verbaux et journaux respectifs de ces chambres, l'usage de ces deux langues sera obligatoire; et dans toute plaidoirie ou pièce de procédure par-devant les tribunaux ou émanant des tribunaux du Canada qui seront établis sous l'autorité de la présente loi, et par-devant tous les tribunaux ou émanant des tribunaux de Québec, il pourra être fait également usage, à faculté, de l'une ou de l'autre de ces langues.

Les lois du parlement du Canada et de la législature de Québec devront être imprimées et publiées dans ces deux langues.(67)

Ontario and Quebec

Appointment of Executive Officers for Ontario and Quebec

134 Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant Governors of Ontario and Quebec may each appoint under the Great Seal of the Province the following Officers, to hold Office during Pleasure, that is to say, — the Attorney General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the Case of Quebec the Solicitor General, and may, by Order of the Lieutenant Governor in Council, from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof, and may also appoint other and additional Officers to hold Office during Pleasure, and may from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof. (68)

Ontario et Québec

Nomination des fonctionnaires exécutifs pour Ontario et Québec

134 Jusqu'à ce que la législature d'Ontario ou de Québec en ordonne autrement, — les lieutenants-gouverneurs d'Ontario et de Québec pourront, chacun, nommer sous le grand sceau de la province, les fonctionnaires suivants qui resteront en charge durant bon plaisir, savoir : le procureur-général, le secrétaire et régistraire de la province, le trésorier de la province, le commissaire des terres de la couronne, et le commissaire d'agriculture et des travaux publics, et, — en ce qui concerne Québec, — le solliciteur-général; ils pourront aussi, par ordonnance du lieutenant-gouverneur en conseil, prescrire de temps à autre les attributions de ces fonctionnaires et des divers départements placés sous leur contrôle ou dont ils relèvent, et des officiers et employés y attachés; et ils pourront également nommer d'autres fonctionnaires qui resteront en charge durant bon plaisir, et prescrire, de temps à autre, leurs attributions et celles des divers départements placés sous leur contrôle ou dont ils relèvent, et des officiers et employés y attachés.(68)

Powers, Duties, etc. of Executive Officers

135 Until the Legislature of Ontario or Quebec otherwise provides, all Rights, Powers, Duties, Functions, Responsibilities, or Authorities at the passing of this Act vested in or imposed on the Attorney General, Solicitor General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver General, by any Law, Statute, or Ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any Officer to be appointed by the Lieutenant Governor for the Discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the Duties and Functions of the Office of Minister of Agriculture at the passing of this Act imposed by the Law of the Province of Canada, as well as those of the Commissioner of Public Works.[(69)]

Great Seals

136 Until altered by the Lieutenant Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same Design, as those used in the Provinces of Upper Canada and Lower Canada respectively before their Union as the Province of Canada.

Construction of temporary Acts

137 The words ***and from thence to the End of the then next ensuing Session of the Legislature***, or Words to the same Effect, used in any temporary Act of the Province of Canada not expired before the Union, shall be construed to extend and apply to the next Session of the Parliament of Canada if the Subject Matter of the Act is within the Powers of the same as defined by this Act, or to the next Sessions of the Legislatures of Ontario and Quebec respectively if the Subject Matter of the Act is within the Powers of the same as defined by this Act.

As to Errors in Names

138 From and after the Union the Use of the Words ***Upper Canada*** instead of ***Ontario***, or ***Lower Canada*** instead of ***Quebec***, in any Deed, Writ, Process, Pleading, Document, Matter, or Thing shall not invalidate the same.

As to issue of Proclamations before Union, to commence after Union

139 Any Proclamation under the Great Seal of the Province of Canada issued before the Union to take effect at a Time which is subsequent to the Union, whether

Pouvoirs, devoirs, etc., des fonctionnaires exécutifs

135 Jusqu'à ce que la législature d'Ontario ou de Québec en ordonne autrement, — tous les droits, pouvoirs, devoirs, fonctions, obligations ou attributions conférés ou imposés aux procureur-général, solliciteur-général, secrétaire et régistraire de la province du Canada, ministre des finances, commissaire des terres de la couronne, commissaire des travaux publics, et ministre de l'agriculture et receveur-général, lors de la passation de la présente loi, par toute loi, statut ou ordonnance du Haut-Canada, du Bas-Canada ou du Canada, — n'étant pas d'ailleurs incompatibles avec la présente loi, — seront conférés ou imposés à tout fonctionnaire qui sera nommé par le lieutenant-gouverneur pour l'exécution de ces fonctions ou d'aucune d'elles; le commissaire d'agriculture et des travaux publics remplira les devoirs et les fonctions de ministre d'agriculture prescrits, lors de la passation de la présente loi, par la loi de la province du Canada, ainsi que ceux de commissaire des travaux publics.[(69)]

Grands sceaux

136 Jusqu'à modification par le lieutenant-gouverneur en conseil, — les grands sceaux d'Ontario et de Québec respectivement seront les mêmes ou d'après le même modèle que ceux usités dans les provinces du Haut et du Bas-Canada respectivement avant leur union comme province du Canada.

Interprétation des lois temporaires

137 Les mots ***et de là jusqu'à la fin de la prochaine session de la législature***, ou autres mots de la même teneur, employés dans une loi temporaire de la province du Canada non-expirée avant l'union, seront censés signifier la prochaine session du parlement du Canada, si l'objet de la loi tombe dans la catégorie des pouvoirs attribués à ce parlement et définis dans la présente constitution, si non, aux prochaines sessions des législatures d'Ontario et de Québec respectivement, si l'objet de la loi tombe dans la catégorie des pouvoirs attribués à ces législatures et définis dans la présente loi.

Citations erronées

138 Depuis et après l'époque de l'union, l'insertion des mots ***Haut-Canada*** au lieu ***d'Ontario***, ou ***Bas-Canada*** au lieu de ***Québec***, dans tout acte, bref, procédure, plaidoirie, document, matière ou chose, n'aura pas l'effet de l'invalider.

Proclamations ne devant prendre effet qu'après l'union

139 Toute proclamation sous le grand sceau de la province du Canada, lancée antérieurement à l'époque de l'union, pour avoir effet à une date postérieure à l'union,

relating to that Province, or to Upper Canada, or to Lower Canada, and the several Matters and Things therein proclaimed, shall be and continue of like Force and Effect as if the Union had not been made.(70)

qu'elle ait trait à cette province ou au Haut-Canada ou au Bas-Canada, et les diverses matières et choses y énoncées auront et continueront d'y avoir la même force et le même effet que si l'union n'avait pas eu lieu.(70)

As to issue of Proclamations after Union

140 Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada to be issued under the Great Seal of the Province of Canada, whether relating to that Province, or to Upper Canada, or to Lower Canada, and which is not issued before the Union, may be issued by the Lieutenant Governor of Ontario or of Quebec, as its Subject Matter requires, under the Great Seal thereof; and from and after the Issue of such Proclamation the same and the several Matters and Things therein proclaimed shall be and continue of the like Force and Effect in Ontario or Quebec as if the Union had not been made.(71)

Proclamations lancées après l'union

140 Toute proclamation dont l'émission sous le grand sceau de la province du Canada est autorisée par quelque loi de la législature de la province du Canada, — qu'elle ait trait à cette province ou au Haut-Canada ou au Bas-Canada, — et qui n'aura pas été lancée avant l'époque de l'union, pourra l'être par le lieutenant-gouverneur d'Ontario ou de Québec (selon le cas), sous le grand sceau de la province; et, à compter de l'émission de cette proclamation, les diverses matières et choses y énoncées auront et continueront d'avoir la même force et le même effet dans Ontario ou Québec que si l'union n'avait pas eu lieu. (71)

Penitentiary

141 The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec. (72)

Pénitencier

141 Le pénitencier de la province du Canada, jusqu'à ce que le parlement du Canada en ordonne autrement, sera et continuera d'être le pénitencier d'Ontario et de Québec. (72)

Arbitration respecting Debts, etc.

142 The Division and Adjustment of the Debts, Credits, Liabilities, Properties, and Assets of Upper Canada and Lower Canada shall be referred to the Arbitrament of Three Arbitrators, One chosen by the Government of Ontario, One by the Government of Quebec, and One by the Government of Canada; and the Selection of the Arbitrators shall not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and the Arbitrator chosen by the Government of Canada shall not be a Resident either in Ontario or in Quebec.(73)

Dettes renvoyées à l'arbitrage

142 Le partage et la répartition des dettes, crédits, obligations, propriétés et de l'actif du Haut et du Bas-Canada seront renvoyés à la décision de trois arbitres, dont l'un sera choisi par le gouvernement d'Ontario, l'un par le gouvernement de Québec, et l'autre par le gouvernement du Canada; le choix des arbitres n'aura lieu qu'après que le parlement du Canada et les législatures d'Ontario et de Québec auront été réunis; l'arbitre choisi par le gouvernement du Canada ne devra être domicilié ni dans Ontario ni dans Québec.(73)

Division of Records

143 The Governor General in Council may from Time to Time order that such and so many of the Records, Books, and Documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the Property of that Province; and any Copy thereof or Extract therefrom, duly certified by the Officer having charge of the Original thereof, shall be admitted as Evidence.(74)

Partage des archives

143 Le gouverneur-général en conseil pourra de temps à autre ordonner que les archives, livres et documents de la province du Canada qu'il jugera à propos de désigner, soient remis et transférés à Ontario ou à Québec, et ils deviendront dès lors la propriété de cette province; toute copie ou extrait de ces documents, dûment certifiée par l'officier ayant la garde des originaux, sera reçue comme preuve.(74)

Constitution of Townships in Quebec

144 The Lieutenant Governor of Quebec may from Time to Time, by Proclamation under the Great Seal of the Province, to take effect from a Day to be appointed therein, constitute Townships in those Parts of the Province of Quebec in which Townships are not then already constituted, and fix the Metes and Bounds thereof.

Établissement de townships dans Québec

144 Le lieutenant-gouverneur de Québec pourra, de temps à autre, par proclamation sous le grand sceau de la province devant venir en force au jour y mentionné, établir des townships dans les parties de la province de Québec dans lesquelles il n'en a pas encore été établi, et en fixer les tenants et aboutissants.

X. Intercolonial Railway

145 Repealed.[75]

XI. Admission of Other Colonies

Power to admit Newfoundland, etc., into the Union

146 It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.[76]

As to Representation of Newfoundland and Prince Edward Island in Senate

147 In case of the Admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a Representation in the Senate of Canada of Four Members, and (notwithstanding anything in this Act) in case of the Admission of Newfoundland the normal Number of Senators shall be Seventy-six and their maximum Number shall be Eighty-two; but Prince Edward Island when admitted shall be deemed to be comprised in the third of the Three Divisions into which Canada is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the Admission of Prince Edward Island, whether Newfoundland is admitted or not, the Representation of Nova Scotia and New Brunswick in the Senate shall, as Vacancies occur, be reduced from Twelve to Ten Members respectively, and the Representation of each of those Provinces shall not be increased at any Time beyond Ten, except under the Provisions of this Act for the Appointment of Three or Six additional Senators under the Direction of the Queen.[77]

X. Chemin de fer intercolonial

145 Abrogé.[75]

XI. Admission des autres colonies

Pouvoir d'admettre Terreneuve, etc.

146 Il sera loisible à la Reine, de l'avis du très-honorable Conseil Privé de Sa Majesté, sur la présentation d'adresses de la part des chambres du Parlement du Canada, et des chambres des législatures respectives des colonies ou provinces de Terreneuve, de l'Île du Prince Édouard et de la Colombie Britannique, d'admettre ces colonies ou provinces, ou aucune d'elles dans l'union, — et, sur la présentation d'adresses de la part des chambres du parlement du Canada, d'admettre la Terre de Rupert et le Territoire du Nord-Ouest, ou l'une ou l'autre de ces possessions, dans l'union, aux termes et conditions, dans chaque cas, qui seront exprimés dans les adresses et que la Reine jugera convenable d'approuver, conformément à la présente; les dispositions de tous ordres en conseil rendus à cet égard, auront le même effet que si elles avaient été décrétées par le parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande.[76]

Représentation de Terreneuve et l'Île du Prince-Édouard au Sénat

147 Dans le cas de l'admission de Terreneuve et de l'Île du Prince Édouard, ou de l'une ou de l'autre de ces colonies, chacune aura droit d'être représentée par quatre membres dans le Sénat du Canada; et (nonobstant toute disposition contraire énoncée dans la présente loi) dans le cas de l'admission de Terreneuve, le nombre normal des sénateurs sera de soixante-seize et son maximum de quatre-vingt-deux; mais lorsque l'Île du Prince Édouard sera admise, elle sera censée comprise dans la troisième des trois divisions en lesquelles le Canada est, relativement à la composition du Sénat, partagé par la présente loi; et, en conséquence, après l'admission de l'Île du Prince Édouard, que Terreneuve soit admise ou non, la représentation de la Nouvelle-Écosse et du Nouveau-Brunswick dans le Sénat, au fur et à mesure que des sièges deviendront vacants, sera réduite de douze à dix membres respectivement; la représentation de chacune de ces provinces ne sera jamais augmentée au delà de dix membres, sauf sous l'autorité des dispositions de la présente loi relatives à la nomination de trois ou six sénateurs supplémentaires en conséquence d'un ordre de la Reine.[77]

THE FIRST SCHEDULE[(78)]

Electoral Districts of Ontario

A. Existing Electoral Divisions.

Counties

1. Prescott.
2. Glengarry.
3. Stormont.
4. Dundas.
5. Russell.
6. Carleton.
7. Prince Edward.
8. Halton.
9. Essex.

Ridings of Counties

10. North Riding of Lanark.
11. South Riding of Lanark.
12. North Riding of Leeds and North Riding of Grenville.
13. South Riding of Leeds.
14. South Riding of Grenville.
15. East Riding of Northumberland.
16. West Riding of Northumberland (excepting therefrom the Township of South Monaghan).
17. East Riding of Durham.
18. West Riding of Durham.
19. North Riding of Ontario.
20. South Riding of Ontario.
21. East Riding of York.
22. West Riding of York.
23. North Riding of York.
24. North Riding of Wentworth.
25. South Riding of Wentworth.
26. East Riding of Elgin.
27. West Riding of Elgin.
28. North Riding of Waterloo.
29. South Riding of Waterloo.
30. North Riding of Brant.
31. South Riding of Brant.
32. North Riding of Oxford.
33. South Riding of Oxford.
34. East Riding of Middlesex.

Cities, Parts of Cities, and Towns

35. West Toronto.
36. East Toronto.
37. Hamilton.
38. Ottawa.
39. Kingston.
40. London.
41. Town of Brockville, with the Township of Elizabethtown thereto attached.
42. Town of Niagara, with the Township of Niagara thereto attached.
43. Town of Cornwall, with the Township of Cornwall thereto attached.

B. New Electoral Divisions

44. The Provisional Judicial District of Algoma.

PREMIÈRE ANNEXE[(78)]

Districts électoraux d'Ontario

A. Divisions électorales actuelles

Comtés

1. Prescott.
2. Glengarry.
3. Stormont.
4. Dundas.
5. Russell.
6. Carleton.
7. Prince Edouard.
8. Halton.
9. Essex.

Divisions de comtés

10. Division nord de Lanark.
11. Division sud de Lanark.
12. Division nord de Leeds et division nord de Grenville.
13. Division sud de Leeds.
14. Division sud de Grenville.
15. Division est de Northumberland.
16. Division ouest de Northumberland (sauf le township de Monaghan sud).
17. Division est de Durham.
18. Division ouest de Durham.
19. Division nord d'Ontario.
20. Division sud d'Ontario.
21. Division est d'York.
22. Division ouest d'York.
23. Division nord d'York.
24. Division nord de Wentworth.
25. Division sud de Wentworth.
26. Division est d'Elgin.
27. Division ouest d'Elgin.
28. Division nord de Waterloo.
29. Division sud de Waterloo.
30. Division nord de Brant.
31. Division sud de Brant.
32. Division nord d'Oxford.
33. Division sud d'Oxford.
34. Division est de Middlesex.

Cités, parties de cités et villes

35. Toronto ouest.
36. Toronto est.
37. Hamilton.
38. Ottawa.
39. Kingston.
40. London.
41. Ville de Brockville, avec le township d'Elizabethtown y annexé.
42. Ville de Niagara, avec le township de Niagara y annexé.
43. Ville de Cornwall, avec le township de Cornwall y annexé.

B. Nouvelles divisions électorales

44. Le district judiciaire provisoire d'Algoma.

The County of BRUCE, divided into Two Ridings, to be called respectively the North and South Ridings:

45. The North Riding of Bruce to consist of the Townships of Bury, Lindsay, Eastnor, Albermarle, Amable, Arran, Bruce, Elderslie, and Saugeen, and the Village of Southampton.

46. The South Riding of Bruce to consist of the Townships of Kincardine (including the Village of Kincardine), Greenock, Brant, Huron, Kinloss, Culross, and Carrick.

The County of HURON, divided into Two Ridings, to be called respectively the North and South Ridings:

47. The North Riding to consist of the Townships of Ashfield, Wawanosh, Turnberry, Howick, Morris, Grey, Colborne, Hullett, including the Village of Clinton, and McKillop.

48. The South Riding to consist of the Town of Goderich and the Townships of Goderich, Tuckersmith, Stanley, Hay, Usborne, and Stephen.

The County of MIDDLESEX, divided into three Ridings, to be called respectively the North, West, and East Ridings:

49. The North Riding to consist of the Townships of McGillivray and Biddulph (taken from the County of Huron), and Williams East, Williams West, Adelaide, and Lobo.

50. The West Riding to consist of the Townships of Delaware, Carradoc, Metcalfe, Mosa and Ekfrid, and the Village of Strathroy.
[The East Riding to consist of the Townships now embraced therein, and be bounded as it is at present.]

51. The County of LAMBTON to consist of the Townships of Bosanquet, Warwick, Plympton, Sarnia, Moore, Enniskillen, and Brooke, and the Town of Sarnia.

52. The County of KENT to consist of the Townships of Chatham, Dover, East Tilbury, Romney, Raleigh, and Harwich, and the Town of Chatham.

53. The County of BOTHWELL to consist of the Townships of Sombra, Dawn, and Euphemia (taken from the County of Lambton), and the Townships of Zone, Camden with the Gore thereof, Orford, and Howard (taken from the County of Kent).

The County of GREY divided into Two Ridings to be called respectively the South and North Ridings:

54. The South Riding to consist of the Townships of Bentinck, Glenelg, Artemesia, Osprey, Normanby, Egremont, Proton, and Melancthon.

55. The North Riding to consist of the Townships of Collingwood, Euphrasia, Holland, Saint-Vincent, Sydenham, Sullivan, Derby, and Keppel, Sarawak and Brooke, and the Town of Owen Sound.

The County of PERTH divided into Two Ridings, to be called respectively the South and North Ridings:

56. The North Riding to consist of the Townships of Wallace, Elma, Logan, Ellice, Mornington, and North Easthope, and the Town of Stratford.

57. The South Riding to consist of the Townships of Blanchard, Downie, South Easthope, Fullarton, Hibbert, and the Villages of Mitchell and Ste. Marys.

Le comté de BRUCE, partagé en deux divisions appelées respectivement divisions nord et sud :

45. La division nord de Bruce comprendra les townships de Bury, Lindsay, Eastnor, Albemarle, Amabel, Arran, Bruce, Elderslie, et Saugeen, et le village de Southampton.

46. La division sud de Bruce comprendra les townships de Kincardine (y compris le village de Kincardine), Greenock, Brant, Huron, Kinross, Culross, et Carrick.

Le comté de HURON, séparé en deux divisions, appelées respectivement divisions nord et sud :

47. La division nord comprendra les townships d'Ashfield, Wawanosh, Turnbury, Howick, Morris, Grey, Colborne, Hullett, y compris le village de Clinton, et McKillop.

48. La division sud comprendra la ville de Goderich et les townships de Goderich, Tuckersmith, Stanley, Hay, Usborne et Stephen.

Le comté de MIDDLESEX, partagé en trois divisions, appelées respectivement divisions nord, ouest et est :

49. La division nord comprendra les townships de McGillivray et Biddulph (soustraits au comté de Huron) et Williams Est, Williams Ouest, Adélaïde et Lobo.

50. La division ouest comprendra les townships de Delaware, Carradoc, Metcalfe, Mosa, et Ekfrid et le village de Strathroy.
[La division est comprendra les townships qu'elle renferme actuellement, et sera bornée de la même manière.]

51. Le comté de LAMBTON comprendra les townships de Bosanquet, Warwick, Plympton, Sarnia, Moore, Enniskillen, et Brooke, et la ville de Sarnia.

52. Le comté de KENT comprendra les townships de Chatham, Dover, Tilbury Est, Romney, Raleigh, et Harwich, et la ville de Chatham.

53. Le comté de BOTHWELL comprendra les townships de Sombra, Dawn et Euphemia (soustraits au comté de Lambton), et les townships de Zone, Camden et son augmentation, Orford et Howard (soustraits au comté de Kent).

Le comté de GREY, partagé en deux divisions, appelées respectivement divisions sud et nord :

54. La division sud comprendra les townships de Bentinck, Glenelg, Artemesia, Osprey, Normandy, Egremont, Proton et Melancthon.

55. La division nord comprendra les townships de Collingwood, Euphrasia, Holland, Saint-Vincent, Sydenham, Sullivan, Derby et Keppel, Sarawak et Brooke, et la ville d'Owen Sound.

Le comté de PERTH, partagé en deux divisions, appelées respectivement divisions sud et nord :

56. La division nord comprendra les townships de Wallace, Elma, Logan, Ellice, Mornington, et Easthope Nord, et la ville de Stratford.

57. La division sud comprendra les townships de Blanchard, Downie, South Easthope, Fullarton, Hibbert et les villages de Mitchell et Ste. Marys.

The County of WELLINGTON divided into Three Ridings to be called respectively North, South and Centre Ridings:

58. The North Riding to consist of the Townships of Amaranth, Arthur, Luther, Minto, Maryborough, Peel, and the Village of Mount Forest.

59. The Centre Riding to consist of the Townships of Garafraxa, Erin, Eramosa, Nichol, and Pilkington, and the Villages of Fergus and Elora.

60. The South Riding to consist of the Town of Guelph, and the Townships of Guelph and Puslinch.

The County of NORFOLK, divided into Two Ridings, to be called respectively the South and North Ridings:

61. The South Riding to consist of the Townships of Charlotteville, Houghton, Walsingham, and Woodhouse, and with the Gore thereof.

62. The North Riding to consist of the Townships of Middleton, Townsend, and Windham, and the Town of Simcoe.

63. The County of HALDIMAND to consist of the Townships of Oneida, Seneca, Cayuga North, Cayuga South, Raynham, Walpole, and Dunn.

64. The County of MONCK to consist of the Townships of Canborough and Moulton, and Sherbrooke, and the Village of Dunnville (taken from the County of Haldimand), the Townships of Caister and Gainsborough (taken from the County of Lincoln), and the Townships of Pelham and Wainfleet (taken from the County of Welland).

65. The County of LINCOLN to consist of the Townships of Clinton, Grantham, Grimsby, and Louth, and the Town of St. Catherines.

66. The County of WELLAND to consist of the Townships of Bertie, Crowland, Humberstone, Stamford, Thorold, and Willoughby, and the Villages of Chippewa, Clifton, Fort Erie, Thorold, and Welland.

67. The County of PEEL to consist of the Townships of Chinguacousy, Toronto, and the Gore of Toronto, and the Villages of Brampton and Streetsville.

68. The County of CARDWELL to consist of the Townships of Albion and Caledon (taken from the County of Peel), and the Townships of Adjala and Mono (taken from the County of Simcoe).

The County of SIMCOE, divided into Two Ridings, to be called respectively the South and North Ridings:

69. The South Riding to consist of the Townships of West Gwillimbury, Tecumseth, Innisfil, Essa, Tosorontio, Mulmur, and the Village of Bradford.

70. The North Riding to consist of the Townships of Nottawasaga, Sunnidale, Vespra, Flos, Oro, Medonte, Orillia and Matchedash, Tiny and Tay, Balaklava and Robinson, and the Towns of Barrie and Collingwood.

The County of VICTORIA, divided into Two Ridings, to be called respectively the South and North Ridings:

71. The South Riding to consist of the Townships of Ops, Mariposa, Emily, Verulam, and the Town of Lindsay.

72. The North Riding to consist of the Townships of Anson, Bexley, Carden, Dalton, Digby, Eldon, Fenelon, Hindon, Laxton, Lutterworth, Macaulay and Draper, Sommerville, and Morrison, Muskoka, Monck and Watt (taken from the County of Simcoe), and any

Le comté de WELLINGTON, partagé en trois divisions, appelées respectivement divisions nord, sud et centre :

58. La division nord comprendra les townships de Amaranth, Arthur, Luther, Minto, Maryborough, Peel et le village de Mount Forest.

59. La division centre comprendra les townships de Garafraxa, Erin, Eramosa, Nichol, et Pilkington, et les villages de Fergus et Elora.

60. La division sud comprendra la ville de Guelph, et les townships de Guelph et Puslinch.

Le comté de NORFOLK, partagé en deux divisions, appelées respectivement divisions sud et nord :

61. La division sud comprendra les townships de Charlotteville, Houghton, Walsingham, et Woodhouse et son augmentation.

62. La division nord comprendra les townships de Middleton, Townsend, et Windham, et la ville de Simcoe.

63. Le comté d'HALDIMAND comprendra les townships de Oneida, Seneca, Cayuga nord, Cayuga sud, Raynham, Walpole et Dunn.

64. Le comté de MONCK comprendra les townships de Canborough et Moulton et Sherbrooke, et le village de Danville (soustraits au comté d'Haldimand), les townships de Caistor et Gainsborough (soustraits au comté de Lincoln) et les townships de Pelham et Wainfleet (soustraits au comté de Welland).

65. Le comté de LINCOLN comprendra les townships de Clinton, Grantham, Grimsby, et Louth, et la ville de Ste. Catherines.

66. Le comté de WELLAND comprendra les townships de Berthie, Crowland, Humberstone, Stamford, Thorold, et Willoughby, et les villages de Chippewa, Clifton, Fort Erié, Thorold et Welland.

67. Le comté de PEEL comprendra les townships de Chinguacousy, Toronto et l'augmentation de Toronto, et les villages de Brampton et Streetsville.

68. Le comté de CARDWELL comprendra les townships de Albion et Caledon (soustraits au comté de Peel), et les townships de Adjala et Mono (soustraits au comté de Simcoe).

Le comté de SIMCOE, partagé en deux divisions, appelées respectivement divisions sud et nord :

69. La division sud comprendra les townships de Gwillimbury ouest, Tecumseth, Innisfil, Essa, Tosorontio, Mulmur, et le village de Bradford.

70. La division nord comprendra les townships de Nottawasaga, Sunnidale, Vespra, Flos, Oro, Medonte, Orillia et Matchedash, Tiny et Tay, Balaklava et Robinson, et les villes de Barrie et Collingwood.

Le comté de VICTORIA, partagé en deux divisions, appelées respectivement divisions sud et nord :

71. La division sud comprendra les townships de Ops, Mariposa, Emily, Verulam et la ville de Lindsay.

72. La division nord comprendra les townships de Anson, Bexley, Carden, Dalton, Digby, Eldon, Fénélon, Hindon, Laxton, Lutterworth, Macaulay et Draper, Sommerville et Morrison, Muskoka, Monck et Watt (soustraits au comté de Simcoe), et tous autres townships arpentés au nord de cette division.

other surveyed Townships lying to the North of the said North Riding.

The County of PETERBOROUGH, divided into Two Ridings, to be called respectively the West and East Ridings:

73. The West Riding to consist of the Townships of South Monaghan (taken from the County of Northumberland), North Monaghan, Smith, and Ennismore, and the Town of Peterborough.

74. The East Riding to consist of the Townships of Asphodel, Belmont and Methuen, Douro, Dummer, Galway, Harvey, Minden, Stanhope and Dysart, Otonabee, and Snowden, and the Village of Ashburnham, and any other surveyed Townships lying to the North of the said East Riding.

The County of HASTINGS, divided into Three Ridings, to be called respectively the West, East, and North Ridings:

75. The West Riding to consist of the Town of Belleville, the Township of Sydney, and the Village of Trenton.

76. The East Riding to consist of the Townships of Thurlow, Tyendinaga, and Hungerford.

77. The North Riding to consist of the Townships of Rawdon, Huntingdon, Madoc, Elzevir, Tudor, Marmora, and Lake, and the Village of Stirling, and any other surveyed Townships lying to the North of the said North Riding.

78. The County of LENNOX to consist of the Townships of Richmond, Adolphustown, North Fredericksburg, South Fredericksburg, Ernest Town, and Amherst Island, and the Village of Napanee.

79. The County of ADDINGTON to consist of the Townships of Camden, Portland, Sheffield, Hinchinbrooke, Kaladar, Kennebec, Olden, Oso, Anglesea, Barrie, Clarendon, Palmerston, Effingham, Abinger, Miller, Canonto, Denbigh, Loughborough, and Bedford.

80. The County of FRONTENAC to consist of the Townships of Kingston, Wolfe Island, Pittsburg and Howe Island, and Storrington.

The County of RENFREW, divided into Two Ridings, to be called respectively the South and North Ridings:

81. The South Riding to consist of the Townships of McNab, Bagot, Blithfield, Brougham, Horton, Admaston, Grattan, Matawatchan, Griffith, Lyndoch, Raglan, Radcliffe, Brudenell, Sebastopol, and the Villages of Arnprior and Renfrew.

82. The North Riding to consist of the Townships of Ross, Bromley, Westmeath, Stafford, Pembroke, Wilberforce, Alice, Petawawa, Buchanan, South Algona, North Algona, Fraser, McKay, Wylie, Rolph, Head, Maria, Clara, Haggerty, Sherwood, Burns, and Richards, and any other surveyed Townships lying North-westerly of the said North Riding.

Every Town and incorporated Village existing at the Union, not especially mentioned in this Schedule, is to be taken as Part of the County or Riding within which it is locally situate.

Le comté de PETERBOROUGH, partagé en deux divisions, appelées respectivement divisions ouest et est :

73. La division ouest comprendra les townships de Monaghan sud (soustrait au comté de Northumberland), Monaghan Nord, Smith, Ennismore et la ville de Peterborough.

74. La division est comprendra les townships d'Asphodel, Belmont et Methuen, Douro, Dummer, Galway, Harvey, Minden, Stanhope et Dysart, Otonabee et Snowden et le village de Ashburnham, et tous autres townships arpentés au nord de cette division.

Le comté de HASTINGS, partagé en trois divisions, appelées respectivement divisions ouest, est et nord :

75. La division ouest comprendra la ville de Belleville, le township de Sydney, et le village de Trenton.

76. La division est comprendra les townships de Thurlow, Tyendinaga, et Hungerford.

77. La division nord comprendra les townships de Rawdon, Huntingdon, Madoc, Elzevir, Tudor, Marmora et Lake, et le village de Stirling, et tous autres townships arpentés au nord de cette division.

78. Le comté de LENNOX comprendra les townships de Richmond, Adolphustown, Fredericksburgh nord, Fredericksburgh sud, Ernest Town et l'Isle Amherst, et le village de Napanee.

79. Le comté d'ADDINGTON comprendra les townships de Camden, Portland, Sheffield, Hinchinbrooke, Kaladar, Kennebec, Olden, Oso, Anglesea, Barrie, Clarendon, Palmerston, Effingham, Abinger, Miller, Canonto, Denbigh, Loughborough et Bedford.

80. Le comté de FRONTENAC comprendra les townships de Kingston, l'Ile Wolfe, Pittsburgh et l'Ile Howe, et Storrington.

Le comté de RENFREW, partagé en deux divisions, appelées respectivement divisions sud et nord :

81. La division sud comprendra les townships de McNab, Bagot, Blithfield, Brougham, Horton, Admaston, Grattan, Matawatchan, Griffith, Lyndoch, Raglan, Radcliffe, Brudenell, Sebastopol, et les villages de Arnprior et Renfrew.

82. La division nord comprendra les townships de Ross, Bromley, Westmeath, Stafford, Pembroke, Wilberforce, Alice, Petawawa, Buchanan, Algoma sud, Algoma nord, Fraser, McKay, Wylie, Rolph, Head, Maria, Clara, Haggerty, Sherwood, Burns et Richard, et tous autres townships arpentés au nord-ouest de cette division.

Les villes et villages incorporés à l'époque de l'union, non mentionnés spécialement dans cette annexe, devront faire partie du comté ou de la division dans laquelle ils sont situés.

THE SECOND SCHEDULE

Electoral Districts of Quebec specially fixed

COUNTIES OF —

Pontiac.
Ottawa.
Argenteuil.
Huntingdon.
Missisquoi.
Brome.
Shefford.
Stanstead.
Compton.
Wolfe and Richmond.
Megantic.
Town of Sherbrooke.

DEUXIÈME ANNEXE

Districts Électoraux de Québec spécialement fixés

COMTÉS DE —

Pontiac.
Ottawa.
Argenteuil.
Huntingdon.
Missisquoi.
Brome.
Shefford.
Stanstead.
Compton.
Wolfe et Richmond.
Mégantic.
La ville de Sherbrooke.

THE THIRD SCHEDULE

Provincial Public Works and Property to be the Property of Canada

1. Canals, with Lands and Water Power connected therewith.
2. Public Harbours.
3. Lighthouses and Piers, and Sable Island.
4. Steamboats, Dredges, and public Vessels.
5. Rivers and Lake Improvements.
6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
7. Military Roads.
8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the Use of the Provincial Legislatures and Governments.
9. Property transferred by the Imperial Government, and known as Ordnance Property.
10. Armouries, Drill Sheds, Military Clothing, and Munitions of War, and Lands set apart for general Public Purposes.

TROISIÈME ANNEXE

Travaux et propriétés publiques de la province devant appartenir au Canada

1. Canaux, avec les terrains et pouvoirs d'eau y adjacents.
2. Havres publics.
3. Phares et quais, et l'Île de Sable.
4. Bateaux à vapeur, dragueurs et vaisseaux publics.
5. Améliorations sur les lacs et rivières.
6. Chemins de fer et actions dans les chemins de fer, hypothèques et autres dettes dues par les compagnies de chemins de fer.
7. Routes militaires.
8. Maisons de douane, bureaux de poste, et tous autres édifices publics, sauf ceux que le gouvernement du Canada destine à l'usage des législatures et des gouvernements provinciaux.
9. Propriétés transférées par le gouvernement impérial, et désignées sous le nom de propriétés de l'artillerie.
10. Arsenaux, salles d'exercice militaires, uniformes, munitions de guerre, et terrains réservés pour les besoins publics et généraux.

THE FOURTH SCHEDULE

Assets to be the Property of Ontario and Quebec conjointly

Upper Canada Building Fund.
Lunatic Asylums.
Normal School.
Court Houses in Aylmer, Montreal, Kamouraska, } Lower Canada.
Law Society, Upper Canada.
Montreal Turnpike Trust.
University Permanent Fund.
Royal Institution.
Consolidated Municipal Loan Fund, Upper Canada.
Consolidated Municipal Loan Fund, Lower Canada.
Agricultural Society, Upper Canada.
Lower Canada Legislative Grant.
Quebec Fire Loan.
Temiscouata Advance Account.
Quebec Turnpike Trust.
Education — East.
Building and Jury Fund, Lower Canada.
Municipalities Fund.
Lower Canada Superior Education Income Fund.

QUATRIÈME ANNEXE

Actif devenant la propriété commune d'Ontario et Québec

Fonds de bâtisse du Haut-Canada.
Asiles d'aliénés.
École Normale.
Palais de justice à Aylmer, Montréal, Kamouraska,} Bas-Canada.
Société des hommes de loi, Haut-Canada.
Commission des chemins à barrières de Montréal.
Fonds permanent de l'université.
Institution royale.
Fonds consolidé d'emprunt municipal, Haut-Canada.
Fonds consolidé d'emprunt municipal, Bas-Canada.
Société d'agriculture, Haut-Canada.
Octroi législatif en faveur du Bas-Canada.
Prêt aux incendiés de Québec.
Compte des avances, Témiscouata.
Commission des chemins à barrières de Québec.
Éducation — Est.
Fonds de bâtisse et de jurés, Bas-Canada.
Fonds des municipalités.
Fonds du revenu de l'éducation supérieure, Bas-Canada.

THE FIFTH SCHEDULE

Oath of Allegiance

I *A.B.* do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

Note. — The Name of the King or Queen of the United Kingdom of Great Britain and Ireland for the Time being is to be substituted from Time to Time, with proper Terms of Reference thereto.

Declaration of Qualification

I *A.B.* do declare and testify, That I am by Law duly qualified to be appointed a Member of the Senate of Canada [*or as the Case may be*], and that I am legally or equitably seised as of Freehold for my own Use and Benefit of Lands or Tenements held in Free and Common Socage [*or* seised or possessed for my own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture (*as the Case may be*),] in the Province of Nova Scotia [*or as the Case may be*] of the Value of Four thousand Dollars over and above all Rents, Dues, Debts, Mortgages, Charges, and Incumbrances due or payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a Title to or become possessed of the said Lands and Tenements or any Part thereof for the Purpose of enabling me to become a Member of the Senate of Canada [*or as the Case may be*], and that my Real and Personal Property are together worth Four thousand Dollars over and above my Debts and Liabilities.

CINQUIÈME ANNEXE

Serment d'allégeance

Je, *A.B.*, jure que je serai fidèle et porterai vraie allégeance à Sa Majesté la Reine Victoria.

N.B. — Le nom du Roi ou de la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, alors régnant, devra être inséré, au besoin, en termes appropriés.

Déclaration des qualifications exigées

Je, *A.B.*, déclare et atteste que j'ai les qualifications exigées par la loi pour être nommé membre du Sénat du Canada (*ou selon le cas*), et que je possède en droit ou en équité comme propriétaire, pour mon propre usage et bénéfice, des terres et tenements en franc et commun socage [*ou* que je suis en bonne saisine ou possession, pour mon propre usage et bénéfice, de terres et tenements en franc-alleu ou en roture (*selon le cas*),] dans la province de la Nouvelle-Écosse (*ou selon le cas*), de la valeur de quatre mille piastres, en sus de toutes rentes, dettes, charges, hypothèques et redevances qui peuvent être attachées, dues et payables sur ces immeubles ou auxquelles ils peuvent être affectés, et que je n'ai pas collusoirement ou spécieusement obtenu le titre ou la possession de ces immeubles, en tout ou en partie, dans le but de devenir membre du Sénat du Canada, (*ou selon le cas*,) et que mes biens mobiliers et immobiliers valent, somme toute, quatre mille piastres en sus de mes dettes et obligations.

THE SIXTH SCHEDULE[(79)]

Primary Production from Non-Renewable Natural Resources and Forestry Resources

1 For the purposes of section 92A of this Act,

(a) production from a non-renewable natural resource is primary production therefrom if

(i) it is in the form in which it exists upon its recovery or severance from its natural state, or

(ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and

(b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood.

SIXIÈME ANNEXE[(79)]

Production primaire tirée des ressources naturelles non renouvelables et des ressources forestières

1 Pour l'application de l'article 92A :

a) on entend par production primaire tirée d'une ressource naturelle non renouvelable :

(i) soit le produit qui se présente sous la même forme que lors de son extraction du milieu naturel,

(ii) soit le produit non manufacturé de la transformation, du raffinage ou de l'affinage d'une ressource, à l'exception du produit du raffinage du pétrole brut, du raffinage du pétrole brut lourd amélioré, du raffinage des gaz ou des liquides dérivés du charbon ou du raffinage d'un équivalent synthétique du pétrole brut;

b) on entend par production primaire tirée d'une ressource forestière la production constituée de billots, de poteaux, de bois d'œuvre, de copeaux, de sciure ou d'autre produit primaire du bois, ou de pâte de bois, à l'exception d'un produit manufacturé en bois.

CANADA ACT 1982[(80)]

An Act to give effect to a request by the Senate and House of Commons of Canada

Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1 The *Constitution Act, 1982* set out in Schedule B to this Act is hereby enacted for and shall have the force of law in Canada and shall come into force as provided in that Act.

2 No Act of the Parliament of the United Kingdom passed after the *Constitution Act, 1982* comes into force shall extend to Canada as part of its law.

3 So far as it is not contained in Schedule B, the French version of this Act is set out in Schedule A to this Act and has the same authority in Canada as the English version thereof.

4 This Act may be cited as the *Canada Act 1982*.

LOI DE 1982 SUR LE CANADA[(80)]

Loi donnant suite à une demande du Sénat et de la Chambre des communes du Canada

Sa Très Excellente Majesté la Reine, considérant :

qu'à la demande et avec le consentement du Canada, le Parlement du Royaume-Uni est invité à adopter une loi visant à donner effet aux dispositions énoncées ci-après et que le Sénat et la Chambre des communes du Canada réunis en Parlement ont présenté une adresse demandant à Sa Très Gracieuse Majesté de bien vouloir faire déposer devant le Parlement du Royaume-Uni un projet de loi à cette fin,

sur l'avis et du consentement des Lords spirituels et temporels et des Communes réunis en Parlement, et par l'autorité de celui-ci, édicte :

1 La *Loi constitutionnelle de 1982*, énoncée à l'annexe B, est édictée pour le Canada et y a force de loi. Elle entre en vigueur conformément à ses dispositions.

2 Les lois adoptées par le Parlement du Royaume-Uni après l'entrée en vigueur de la *Loi constitutionnelle de 1982* ne font pas partie du droit du Canada.

3 La partie de la version française de la présente loi qui figure à l'annexe A a force de loi au Canada au même titre que la version anglaise correspondante.

4 Titre abrégé de la présente loi : *Loi de 1982 sur le Canada*.

(55) **See the *Supreme Court Act*, R.S.C. 1985, c. S-26, the *Federal Court Act*, R.S.C. 1985, c. F-7 and the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2.**

(56) **Now covered by the *Governor General's Act*, R.S.C. 1985, c. G-9.**

(57) **Manitoba, Alberta and Saskatchewan were placed in the same position as the original provinces by the *Constitution Act, 1930*, 20-21 Geo. V, c. 26 (U.K.).**

These matters were dealt with in respect of British Columbia by the *British Columbia Terms of Union* and also in part by the *Constitution Act, 1930*.

Newfoundland was also placed in the same position by the *Newfoundland Act*, 12-13 Geo. V1, c. 22 (U.K.).

With respect to Prince Edward Island, see the Schedule to the *Prince Edward Island Terms of Union*.

(58) **The obligations imposed by sections 114, 115 and 116, and similar obligations under the instruments creating or admitting other provinces, are now to be found in the *Provincial Subsidies Act*, R.S.C. 1985, c. P-26.**

(59) **Repealed by the *Statute Law Revision Act, 1950*, 14 Geo. VI, c. 6 (U.K.).**

The section originally read as follows:

118 The following Sums shall be paid yearly by Canada to the several Provinces for the Support of their Governments and Legislatures:

	Dollars.
Ontario.....	Eighty thousand.
Quebec.....	Seventy thousand.
Nova Scotia.....	Sixty thousand.
New Brunswick.....	Fifty thousand.
	Two hundred and sixty thousand;

and an annual Grant in aid of each Province shall be made, equal to Eighty Cents per Head of the Population as ascertained by the Census of One thousand eight hundred and sixty-one, and in the Case of Nova Scotia and New Brunswick, by each subsequent Decennial Census until the Population of each of those two Provinces amounts to Four hundred thousand Souls, at which Rate such Grant shall thereafter remain. Such Grants shall be in full Settlement of all future Demands on Canada, and shall be paid half-yearly in advance to each Province; but the Government of Canada shall deduct from such Grants, as against any Province, all Sums chargeable as Interest on the Public Debt of that Province in excess of the several Amounts stipulated in this Act.

The section was made obsolete by the *Constitution Act, 1907*, 7 Edw. VII, c. 11 (U.K.), which provided:

1. (1) The following grants shall be made yearly by Canada to every province, which at the commencement of this Act is a province of the Dominion, for its local purposes and the support of its Government and Legislature:

(a) A fixed grant

where the population of the province is under one hundred and fifty thousand, of one hundred thousand dollars;

where the population of the province is one hundred and fifty thousand, but does not exceed two hundred thousand, of one hundred and fifty thousand dollars;

where the population of the province is two hundred thousand, but does not exceed four hundred thousand, of one hundred and eighty thousand dollars;

where the population of the province is four hundred thousand, but does not exceed eight hundred thousand, of one hundred and ninety thousand dollars;

where the population of the province is eight hundred thousand, but does not exceed one million five hundred thousand, of two hundred and twenty thousand dollars;

where the population of the province exceeds one million five hundred thousand, of two hundred and forty thousand dollars; and

(b) Subject to the special provisions of this Act as to the provinces of British Columbia and Prince Edward Island, a grant at the rate of eighty cents per head of the population of the province up to the number of two million five hundred thousand, and at the rate of sixty cents per head of so much of the population as exceeds that number.

(2) An additional grant of one hundred thousand dollars shall be made yearly to the province of British Columbia for a period of ten years from the commencement of this Act.

(3) The population of a province shall be ascertained from time to time in the case of the provinces of Manitoba, Saskatchewan, and Alberta respectively by the last quinquennial census or statutory estimate of population made under the Acts establishing those provinces or any other Act of the Parliament of Canada making provision for the purpose, and in the case of any other province by the last decennial census for the time being.

Province of Alberta

MINES AND MINERALS ACT

Revised Statutes of Alberta 2000
Chapter M-17

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MINES AND MINERALS ACT

Chapter M-17

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

(a) "agreement" means an instrument issued pursuant to this Act or the former Act that grants rights in respect of a mineral, subsurface reservoir, or geothermal resource, but does not include a notification, a transfer referred to in section 12, a unit agreement or a contract under section 9(a);

(a.01) "base of groundwater protection" means the base of groundwater protection as defined in the *Water Wells and Ground Source Heat Exchange System Directive* published by Alberta Environment and Protected Areas, as amended or replaced from time to time;

(a.1) "captured carbon dioxide" means a fluid substance consisting mainly of carbon dioxide captured from an emissions source;

(b) "certificate of record" means a certificate of record within the meaning of the regulations;

(c) "certificate of title" means a certificate granted pursuant to the *Land Titles Act*;

(d) "crude bitumen" means a naturally occurring viscous mixture, mainly of hydrocarbons heavier than pentane, that may contain sulphur compounds and that, in its naturally occurring viscous state, will not flow to a well;

(e) "Department" means the Department administered by the Minister;

(f) "disposition" means a grant, a transfer referred to in section 12 or an agreement;

(g) "estate in a mineral" means an estate in fee simple in a mineral or an estate for a life or lives in being in a mineral;

(h) "fluid mineral substance" means a fluid substance consisting of a mineral or of a product obtained from a mineral by processing or otherwise;

(i) "former Act" means any predecessor of this Act;

(i.1) "geothermal resource" means the natural heat from the earth that is below the base of groundwater protection;

(j) "grant" means letters patent under the Great Seal of Canada or a notification issued pursuant to *The Provincial Lands Act*, RSA 1942 c62, the former Act or this Act;

(k) "issue", with reference to a disposition, means to issue the disposition in accordance with the regulations;

(l) "lessee" means, except in section 82.1, the holder according to the records of the Department of an agreement;

(m) "location" means, except in section 82.1, the tract described in an agreement;

(n) "mine" means any opening or excavation in, or working of, the surface or subsurface for the purpose of working, recovering, opening up or proving any mineral or mineral-bearing substance, and includes works and machinery at or below the surface belonging to or used in connection with the mine;

(o) "mineral claim" means the tract described in a certificate of record;

(p) "minerals" means all naturally occurring minerals, and without restricting the generality of the foregoing, includes

(i) gold, silver, uranium, platinum, pitchblende, radium, precious stones, copper, iron, tin, zinc, asbestos, salts, sulphur, petroleum, oil, asphalt, bituminous sands, oil sands, natural gas, coal, anhydrite, barite, bauxite, bentonite, diatomite, dolomite, epsomite, granite, gypsum, limestone, marble, mica, mirabilite, potash, quartz rock, rock phosphate, sandstone, serpentine, shale, slate, talc, thenardite, trona, volcanic ash, sand, gravel, clay and marl, but

(ii) does not include

(A) sand and gravel that belong to the owner of the surface of land under section 58 of the *Law of Property Act*,

(B) clay and marl that belong to the owner of the surface of land under section 57 of the *Law of Property Act*, or

(C) peat on the surface of land and peat obtained by stripping off the overburden, excavating from the surface, or otherwise recovered by surface operations;

(q) "Minister" means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

(r) "notification" means a notification in the prescribed form;

(s) "oil sands" means

(i) sands and other rock materials containing crude bitumen,

(ii) the crude bitumen contained in those sands and other rock materials, and

(iii) any other mineral substances, other than natural gas, in association with that crude bitumen or the sands and other rock materials referred to in subclauses (i) and (ii),

and includes a hydrocarbon substance declared to be oil sands under section 7(2) of the *Oil Sands Conservation Act*;

(t) "owner" when used in connection with a mineral claim means the holder according to the records of the Department of a certificate of record;

(u) "quarry" means a pit or excavation in the ground for the purpose of removing, opening up or proving any mineral other than coal or oil sands, and includes works and machinery belonging to or used in connection with the quarry;

(v) "record" means a record as defined in the *Financial Administration Act*;

(w) "registered" means

(i) registered under Division 1 of Part 6, in relation to a transfer, or

(ii) registered under Division 2 of Part 6, in relation to a security notice or any other document registrable under that Division;

(x) "Registrar" means the Registrar within the meaning of the *Land Titles Act*;

(y) "royalty compensation" means money payable to the Crown in right of Alberta as compensation pursuant to regulations made under section 36(2)(i);

(y.1) "sequestration" means permanent disposal;

(z) "storage rights" means the right to inject fluid mineral substances into a subsurface reservoir for the purpose of storage;

(aa) "subsurface cavern" means a subsurface space created as a result of operations for the recovery of a mineral;

(bb) "subsurface reservoir" means the pore space within an underground formation or a subsurface cavern;

(cc) "transfer", in relation to an agreement, means

(i) a transfer of the agreement, a part of the location of the agreement or a specified undivided interest in the agreement made by the lessee of the agreement or the interest, as the case may be,

(ii) a transfer of the agreement or a specified undivided interest in the agreement made by the Minister pursuant to section 23(3), or

(iii) a transfer of the agreement, a part of the location of the agreement or a specified undivided interest in the agreement made by the Minister pursuant to a judgment or order of a court;

(dd) "Transfer Agreement" means the agreement in the Schedule to *The Alberta Natural Resources Act*, SA 1930 c21, and all amendments to that agreement;

(ee) "unit agreement" means an agreement entered into by the Minister under section 102(1);

(ff) "unit operation order" means an order under the *Turner Valley Unit Operations Act*;

(gg) "well" means a well within the meaning of the *Oil and Gas Conservation Act*.

(2) If any mineral, any product obtained from a mineral or any substance is injected into or removed from a subsurface reservoir and a question arises between the Minister and the lessee under an agreement, or any person claiming under the lessee, as to the purpose for which the mineral, mineral product or substance was injected or removed, then, for the purposes of this Act, the question is to be decided by the Minister.

(3) A reference in this Act to a township, section, half section, quarter section and legal subdivision means a township, section, half section, quarter section and legal subdivision, respectively, within the meaning of the *Surveys Act*.

(4) For the purposes of this Act, a reference to a township, section, half section, quarter section or legal subdivision is, in respect of land in unsurveyed territory, deemed to refer to what would be a township, section, half section, quarter section or legal subdivision if the land were surveyed in accordance with the *Surveys Act*.

(5) The references in sections 8(1)(a), 9(a)(i), 36(2)(j) and (3.1), 50(4) and (5) and 52(1) to a product obtained from a mineral, and in section 36(2)(a) and (b) to a product obtained from a royalty share include

(a) any product obtained from a mineral or the royalty share of a mineral by processing, reprocessing or otherwise, and

(b) any product obtained directly or indirectly, and in whole or in part, in exchange for a mineral, a royalty share of a mineral or a product referred to in clause (a).

RSA 2000 cM-17 s1;2003 c28 s2;2006 c21 s26;2008 c36 s2;2010 c14 s2;2020 cG-5.5 s31;2022 c21 s56

Application of Act

Application of Act

2 This Act applies

(a) to all mines and minerals, pore space and related natural resources vested in or belonging to the Crown in right of Alberta, and

(b) where the context so permits or requires, to all wells, mines, quarries, minerals and geothermal resources in Alberta.

RSA 2000 cM-17 s2;2010 c14 s2;2020 cG-5.5 s31

(a) to claim damages or compensation of any kind, including, without limitation, damages or compensation for injurious affection, from the Crown, or

(b) to obtain a declaration that the damages or compensation referred to in clause (a) are payable by the Crown,

as a result of the enactment of this section.

2010 c20 s2

Geothermal resources

10.2 The owner of the mineral title in any land in Alberta has the right to explore for, develop, recover and manage the geothermal resources associated with those minerals and with any subsurface reservoirs under the land.

2020 cG-5.5 s31

Authorized disposition

11(1) No disposition may be made of an estate in a mineral owned by the Crown in right of Alberta unless the disposition is specifically authorized by this or another Act.

(2) Subsection (1) does not preclude

(a) the Lieutenant Governor in Council from transferring the administration and control of minerals to the Crown in right of Canada, or

(b) the Minister from executing and delivering a transfer under the *Land Titles Act* in favour of the Crown in right of Canada of an estate in minerals of which the Crown in right of Alberta is the registered owner.

1983 c36 s6;1985 c39 s3

Transfer

12(1) When a person is entitled to receive from the Crown in right of Alberta a title for an estate in a mineral for which a certificate of title is registered under the *Land Titles Act*, a transfer shall be issued by the Minister.

(2) Before the issue of the transfer, the registration fee payable under the *Land Titles Act* shall be paid to the Minister.

(3) The Minister shall forward the fee paid and the transfer to the Registrar for registration of the transfer under the *Land Titles Act*.

1983 c36 s6

Notification

13(1) When a person is entitled to receive from the Crown in right of Alberta a title for an estate in a mineral for which no certificate

(ii) minerals or water is produced, recovered or extracted from the subsurface reservoir,

and

(c) the exception of pore space under this section is deemed to be an exception contained in the original grant from the Crown for the purposes of section 61(1) of the *Land Titles Act*.

(2) Subsection (1) does not operate to affect the title to land that, on the date on which this section comes into force, belongs to the Crown in right of Canada.

(3) The Minister may enter into agreements with respect to the use of pore space.

(4) It is deemed for all purposes, including for the purposes of the *Expropriation Act*, that no expropriation occurs as a result of the enactment of this section.

(5) No person has a right of action and no person shall commence or maintain proceedings

(a) to claim damages or compensation of any kind, including, without limitation, damages or compensation for injurious affection, from the Crown, or

(b) to obtain a declaration that the damages or compensation referred to in clause (a) is payable by the Crown,

as a result of the enactment of this section.

2010 c14 s2

Agreements

Issue of agreements

16 Subject to this Act and the regulations and any express provision in any applicable ALSA regional plan limiting mineral development within a geographic area, the Minister may issue an agreement in respect of a mineral, subsurface reservoir or geothermal resource

(a) on application, if the Minister considers the issuance of the agreement warranted in the circumstances,

(b) by way of sale by public tender conducted in a manner determined by the Minister, or

(c) pursuant to any other procedure determined by the Minister.

RSA 2000 cM-17 s16;2009 cA-26.8 s82;2010 c14 s2;2020 cG-5.5 s31

(a) removing any installations, equipment or casing incidental to the well,

(b) removing any installations or equipment incidental to the mine or quarry, or

(c) doing any act specified in the authorization in relation to the well, mine or quarry.

(5) If a well, mine or quarry becomes the property of the Crown under this section, the Minister has the same rights and duties that the former lessee had in respect of any right of entry order or surface lease relating to the land on which the well, mine or quarry is located.

(6) Notwithstanding subsection (5), the Minister is not subject to any penalty, debt or other obligation incurred by the former lessee under the right of entry order or surface lease.

(7) In subsections (5) and (6),

(a) "right of entry order" means a right of entry order as defined in the *Surface Rights Act* and a right of entry order under Part 4 of the *Metis Settlements Act*;

(b) "surface lease" means a lease or other instrument under which the surface of land is held for any purpose for which a right of entry order may be made under the *Surface Rights Act* or Part 4 of the *Metis Settlements Act*, and that provides for the payment of compensation.

1983 c36 s6;1990 cM-14.3 s276;1997 c17 s15

Royalty and Other Revenues

Royalty on mineral

33 A royalty determined under this Act is reserved to the Crown in right of Alberta on any mineral recovered pursuant to an agreement.

1983 c36 s6

Amounts payable re geothermal resources

33.1 Amounts determined under this Act for the exploration for and the development and recovery of geothermal resources associated with minerals or subsurface reservoirs that are property of the Crown in right of Alberta are payable to the Crown in right of Alberta.

2020 cG-5.5 s31

Royalty to be prescribed

34(1) Subject to section 34.1, the royalty reserved to the Crown in right of Alberta on a mineral recovered pursuant to an agreement shall be the royalty prescribed from time to time by the Lieutenant Governor in Council.

(2) If a royalty has been reserved to the Crown in right of Canada in any letters patent that convey a mineral, there is reserved to the Crown in right of Alberta

(a) the royalty prescribed from time to time by the Lieutenant Governor in Council in accordance with the Transfer Agreement, or

(b) if no royalty is prescribed under clause (a), the royalty at the rate in effect immediately before the coming into force of the Transfer Agreement.

(3) Except as otherwise provided by the regulations,

(a) the royalty reserved to the Crown in right of Alberta shall be deliverable in kind,

(b) the quantity of the royalty reserved to the Crown in right of Alberta shall be calculated at the place where the mineral is first measured after it is recovered, and

(c) the royalty reserved to the Crown in right of Alberta shall be delivered to the Crown at the place at which the quantity of the royalty is calculated.

RSA 2000 cM-17 s34;2019 c9 s2

Royalty structures – legislative framework guarantee

34.1(1) In this section,

(a) "fundamental restructuring" does not include adjustments or changes made

(i) to simplify or streamline cost calculations, processes, reporting or other similar requirements of an enactment or policy,

(ii) to address significant changes in technology and world markets,

(iii) in accordance with an enactment in force on the date this section comes into force, except as otherwise provided in this section, or in accordance with a relevant policy,

including the planned transition to the Modernized Royalty Framework, 2017, or

(iv) where the Government of Alberta considers that the adjustments or changes are appropriate and consistent with this section;

(b) "hydrocarbon" does not include coal;

(c) "legislative framework" does not include the *Petroleum Marketing Act* and the regulations under that Act.

(2) For a period of 10 years after this section comes into force, no fundamental restructuring of the legislative framework generally applicable to hydrocarbon royalties reserved to the Crown in right of Alberta shall be implemented.

(3) Subject to the regulations, no fundamental restructuring of the legislative framework applicable to hydrocarbon royalties reserved to the Crown in right of Alberta in place on the date a well commences production shall be implemented with respect to that well for a period of 10 years after that date.

(4) For greater certainty, "the legislative framework applicable to hydrocarbon royalties reserved to the Crown in right of Alberta in place on the date a well commences production" in subsection (3) includes the planned transition to the Modernized Royalty Framework, 2017, which will apply to that well according to the terms in force on the date the well commences production.

2019 c9 s3

Crown as owner

35(1) The Crown in right of Alberta is the owner of its royalty share of the mineral at all times until that royalty share is disposed of by or on behalf of the Crown or until the Crown's title to that royalty share is transferred to a lessee or other person pursuant to the regulations, notwithstanding that its share is commingled with and indistinguishable from the lessee's share prior to or at the time of the disposal or transfer of title.

(2) If, at the place where the Crown's royalty share of a mineral is to be delivered to the Crown in right of Alberta, the Crown's royalty share of the mineral is commingled with the lessee's share of the mineral so that the Crown's royalty share cannot be identified, the Crown in right of Alberta is entitled to the quantity of the mineral of equivalent quality that is equal to the Crown's royalty share.

(3) If under the regulations or a contract or agreement under section 9 the quantity of the royalty on a mineral is calculated on the basis of all or any of the products obtained by processing that mineral or by reprocessing the products obtained by processing that mineral, unless otherwise provided a reference to the mineral in any provision in this Act or the regulations respecting the royalty on the mineral shall be read as a reference to the product obtained by the processing or reprocessing, as the case may be.

RSA 2000 cM-17 s35;2008 c36 s6

Regulations

36(1) The Lieutenant Governor in Council may make regulations

(a) prescribing the royalty on a mineral;

(b) prescribing that the quantity of the royalty on a mineral be calculated at a place other than the place where the mineral is first measured after it is recovered;

(c) prescribing that the royalty on a mineral be delivered to the Crown in right of Alberta at a place other than that at which its quantity is calculated;

(d) authorizing the Minister to determine any component or value in the calculation of the royalty on a mineral;

(e) respecting the circumstances under which the quantity of the royalty on a mineral shall be calculated on all or any of the products obtained by processing the mineral or by reprocessing any of those products instead of on the mineral;

(f) respecting the waiver or variation of all or part of the royalty on a mineral and the termination of any such waiver or variation before any date, or before the passing of any time period, specified in the regulations by which the waiver or variation is to expire;

(g) respecting the administration, implementation and operation of section 34.1 generally or with respect to a well or mine or a class of wells or mines;

(h) respecting the legislative framework with respect to a well or a class of wells under section 34.1(3);

(i) defining any word or expression used but not defined in clauses (g) and (h) and section 34.1;

(j) further clarifying the definition of "fundamental restructuring", "hydrocarbon" or "legislative framework" in section 34.1(1) for the purposes of section 34.1;

(k) respecting any other matter relating to section 34.1;

(l) respecting the amounts payable to the Crown in right of Alberta for the exploration for and the development and recovery of geothermal resources associated with minerals and subsurface reservoirs that are property of the Crown in right of Alberta, including the determination of the amounts and the administration of payments.

(2) The Lieutenant Governor in Council may make regulations

(a) respecting the Crown's royalty share of a mineral, including, without limitation, the delivery of the royalty share in kind and the undertaking of any action in relation to the royalty share so delivered for any purpose leading directly or indirectly to and including the disposal of the royalty share or of any product obtained from the royalty share;

(b) respecting the circumstances under which the lessee, the Alberta Petroleum Marketing Commission or any other person may be required to act, or requiring the lessee, the Alberta Petroleum Marketing Commission or any other person to act, as agent of the Crown in right of Alberta for any purpose leading directly or indirectly to and including the disposal of the Crown's royalty share or of any product obtained from the royalty share;

(c) respecting the conditions of any agency relationship created pursuant to clause (b) and the powers, rights and duties of the Minister and of the lessee, the Alberta Petroleum Marketing Commission or any other person under the agency relationship;

(c.1) respecting goods and services that may be required by the Minister or the Alberta Petroleum Marketing Commission to be provided to the Crown or the Alberta Petroleum Marketing Commission for any purpose in relation to the Crown's royalty share of a mineral, the persons required to provide those goods and services, and the consideration to be paid by the Crown or the Alberta Petroleum Marketing Commission for those goods and services;

(c.2) respecting the determination by the Minister or the Alberta Petroleum Marketing Commission of the consideration referred to in clause (c.1) or the determination by the

Alberta Utilities Commission of charges instead of consideration;

(c.3) respecting the rights, powers, liabilities and obligations of the Minister, the Alberta Petroleum Marketing Commission and others in relation to the provision of goods and services referred to in clause (c.1) and the payment of consideration, or charges instead of consideration, for those goods and services;

(d) respecting the determination of the amount of money payable to the Crown in respect of the Crown's royalty share of a mineral when disposed of by a person required by the regulations to be an agent of the Crown for that purpose, notwithstanding the consideration actually received for the Crown's royalty share when it is disposed of by the agent, and respecting the liability of that agent for the payment of that amount;

(e) respecting the determination of the value of a mineral or of the Crown's royalty share of a mineral for any purpose under the regulations;

(f) respecting the costs and allowances for which the Crown may consent to be liable in relation to the Crown's royalty share of a mineral;

(g) respecting the respective rights, powers, liabilities and obligations of the Minister, the lessee and others in the event that the quantity of a mineral delivered to the Crown under the lessee's agreement in a month is less than or greater than the quantity of the Crown's royalty share of the mineral actually payable in respect of that month;

(h) respecting the transfer of title to the Crown's royalty share of a mineral to the lessee or any other person after the recovery of the mineral;

(i) respecting the determination and payment to the Crown of compensation in respect of the Crown's royalty share of a mineral, where the Crown's title to that share is transferred pursuant to regulations under clause (h);

(j) respecting the delivery of a mineral or of a product obtained from a mineral in exchange for, or on account of, or in lieu of, the Crown's royalty share of a mineral or of a product obtained from a mineral.

(3) Without limiting the powers of the Lieutenant Governor in Council under subsection (2)(g), regulations may be made under that clause

(a) respecting the powers of the Minister, in the event of a deficiency in deliveries of the quantity of the Crown's royalty share of a mineral under an agreement in a month, to require that the default under the agreement resulting from the deficient delivery be remedied in a subsequent month by either

(i) the delivery in kind to the Crown of the deficient quantity in that subsequent month, or

(ii) the payment to the Crown in that subsequent month of an amount of money determined in accordance with the regulations as the value to the Crown of the deficient quantity,

whichever the Minister directs;

(b) respecting the powers of the Minister, in the event of deliveries of a mineral to the Crown in excess of the quantity of the Crown's royalty share of the mineral in a month, to act as the agent of the owner of the excess quantity for the sale and delivery of the excess quantity to a purchaser in accordance with the regulations.

(3.1) Without limiting the powers of the Lieutenant Governor in Council under subsection (2)(j), regulations may be made under that clause

(a) authorizing or requiring, or providing for the authorizing or requiring, of deliveries referred to in subsection (2)(j);

(b) respecting the persons authorized or required to participate in a delivery referred to in subsection (2)(j);

(c) respecting the terms governing deliveries referred to in subsection (2)(j);

(d) respecting the rights, powers, duties, functions, liabilities and obligations of the Minister, the Alberta Petroleum Marketing Commission, a lessee or any other person in relation to deliveries referred to in subsection (2)(j), including, without limitation, in relation to excess or deficient deliveries of a mineral, a product obtained from a mineral, the Crown's royalty share of a mineral or the

Crown's royalty share of a product obtained from a mineral, for the purposes of such deliveries;

(e) respecting estimation by the Minister or the Alberta Petroleum Marketing Commission of the Crown's royalty share of a mineral or of a product obtained from a mineral for the purposes of deliveries referred to in subsection (2)(j);

(f) respecting the acquisition by the Minister or the Alberta Petroleum Marketing Commission of anything required for the purposes of, or in connection with, deliveries referred to in subsection (2)(j);

(g) respecting the specifications applicable to any mineral or product obtained from a mineral to be provided to the Crown in deliveries referred to in subsection (2)(j);

(h) respecting the determination or prescribing of adjustments and prices and the application of adjustments and prices for any purpose in relation to deliveries referred to in subsection (2)(j);

(i) respecting the establishment and operation of a market for the purposes of deliveries referred to in subsection (2)(j).

(4) The Lieutenant Governor in Council may make regulations

(a) prescribing a money royalty on a mineral instead of a royalty in kind;

(b) authorizing the Minister to determine any component or value in the calculation of a money royalty on a mineral;

(c) authorizing the Minister to determine the costs and allowances that may be deducted in computing a money royalty on a mineral.

(5) Regulations made under this section may relate to

(a) a specified mineral or class of minerals, or

(b) a specified agreement or class of agreements.

(5.1) The Minister may make regulations

(a) respecting the determination of any component or value in the calculation of the royalty on a mineral;

(b) respecting the determination of any component or value in the calculation of

(i) a money royalty,

(ii) amounts owing to the Crown in respect of the Crown's royalty share of a mineral when the Crown's royalty share is disposed of by an agent, or

(iii) royalty compensation.

(5.2) The Lieutenant Governor in Council may make regulations

(a) prescribing an amount, item or matter for the purpose of section 38(1)(b);

(b) respecting the examination of a record under section 38;

(c) respecting, for the purpose of section 38(3), the amending of a record and the submission of additional documents or information;

(d) respecting the determination of the calendar years for the purpose of section 38;

(e) respecting the period for making an amendment, conducting an examination and making a calculation of costs, charges, expenses, interest and penalties for the purpose of section 38(10);

(f) respecting persons who are authorized to make an objection under section 39;

(g) respecting the making, reviewing and resolving of an objection under section 39;

(h) respecting the application of amendments made by section 6(4), (5) and (6) of the *Statutes Amendment Act, 2014*.

(6) If regulations are made under this section respecting the calculation of royalty on a mineral recovered pursuant to an agreement subject to a unit agreement or unit operation order, the regulations operate notwithstanding anything in the unit agreement or unit operation order.

(7) Repealed 2008 c36 s7.

(8) A regulation made under this section, or an order made pursuant to a regulation made under this section, may be made effective with reference to a period occurring before it is made.

(9) No compensation is payable for goods or services provided pursuant to regulations under subsection (2)(c.1) other than the

(b) is validly given if it is left with an adult person employed at the place of business of the addressee.

(7) If 2 or more persons carry on business as a partnership, a notice to those persons under subsection (2)

(a) may be addressed to the partnership name, and

(b) is validly given if it is given to one of the partners or left with an adult person employed at the place of business of the partnership.

1983 c36 s6;1992 c20 s5;1994 c22 s11;1997 c17 s17

General

Implied reservations to Crown

44 There is implied in every disposition any and all reservations that are required to be made on the disposal of any mineral rights owned by the Crown in right of Alberta.

1983 c36 s6

Cancellation of agreement

45(1) The Minister may cancel an agreement if

(a) there is a breach of any condition contained in the agreement and the breach by its nature is not capable of being remedied,

(b) the lessee has not complied with a notice given under this Act with respect to the agreement or with a notice given under the agreement, or

(c) subject to subsection (2), the lessee has not complied with

(i) this Act or the regulations in relation to the agreement,

(ii) a covenant under the agreement, or

(iii) a condition contained in the agreement, where the default in complying with the condition is by its nature capable of being remedied.

(2) The Minister may not cancel an agreement pursuant to subsection (1)(c) unless

(a) the Minister has given a notice to the lessee stating the nature of the default and that the Minister will cancel the agreement if the default is not remedied before the expiration of the 30-day period following the date on the notice, and

The Alberta Petroleum Marketing Commission

Marketing of Crown's share

86(1) Every agreement to which this section applies is subject to the condition that the Crown's royalty share of a mineral to which this section applies recovered pursuant to the agreement must be delivered to the Alberta Petroleum Marketing Commission.

(2) This section applies only to those agreements and minerals to which it is made applicable by the regulations under subsection (3).

(3) The Lieutenant Governor in Council may make regulations specifying the agreements and minerals to which this section applies.

(4) The Minister may, with respect to any agreement to which this section applies and in any special case when the Minister considers it warranted by circumstances to do so, waive compliance with subsection (1) for any period of time and on any conditions the Minister may prescribe.

RSA 2000 cM-17 s86;2008 c36 s15

Part 5
Oil Sands

McMurray formation

87(1) A lease of bituminous sands rights granted before July 1, 1978 is deemed for all purposes to be a lease of oil sands rights with respect to the McMurray formation.

(2) For the purposes of this Act, the McMurray formation is deemed to be and to have always been a zone designated by the Alberta Energy Regulator.

(3) If any question arises under a disposition or in the administration of this Act or the regulations as to whether

(a) any stratigraphic formation is or is not the McMurray formation, or

(b) any mineral occurring in a stratigraphic formation is or is not oil sands,

the question must be referred to the Minister whose decision on the question is final.

(4) The Minister may, on the application of the lessee of a bituminous sands lease, accept the surrender of the bituminous

(Consolidated up to 52/2019)

ALBERTA REGULATION 222/2008

Mines and Minerals Act

PETROLEUM ROYALTY REGULATION, 2009

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Part 1
General

Interpretation

1(1) In this Regulation,

(a) repealed AR 89/2013 s37;

(b) "crude oil" means a mixture mainly of pentanes and heavier hydrocarbons

(i) that may be contaminated with sulphur compounds,

(ii) that is recovered or is recoverable at a well from an underground reservoir, and

(iii) that is liquid at the conditions under which its volume is measured or estimated,

and includes all other hydrocarbon mixtures so recovered or recoverable except natural gas, field condensate or crude bitumen;

(c) "field condensate" means field condensate as defined in the *Natural Gas Royalty Regulation, 2009*;

(d) "heavy oil" means the category of crude oil determined under section 4 as heavy oil;

(e) repealed AR 52/2019 s7;

(f) "licence" means a licence for a well issued under the *Oil and Gas Conservation Act*;

(g) "licensee" means the holder of a licence according to the records of the Regulator and includes a trustee or receiver-manager of property of a licensee;

(h) "light oil" means the category of crude oil determined under section 4 as light oil;

(i) "medium oil" means the category of crude oil determined under section 4 as medium oil;

(j) "operator", in respect of a well, means the person who is the operator according to the records of the Department;

(k) "pool" means a natural underground reservoir containing or appearing to contain an accumulation of petroleum or natural gas separated or appearing to be separated from any other such accumulation;

(k.1) "producing interval" means a perforation from which production is obtained;

(k.2) "production month" means the month in which petroleum is recovered;

(k.3) "Regulator" means the Alberta Energy Regulator;

(l) "royalty" means royalty reserved to the Crown in right of Alberta;

(m) "solution gas" means

(i) gas that is separated from crude oil after recovery from a well, and

(ii) gas that is dissolved in crude oil under initial reservoir conditions and includes any of that gas that evolves as a result of changes in pressure or temperature, or both, due to human disturbance;

(n) "ultra heavy oil" means the category of crude oil determined under section 4 as ultra heavy oil;

(o) "well event" means

(i) a part of a well completed in a zone and given a unique well identifier by the Regulator,

(ii) parts of a well completed in 2 or more zones and given a single unique well identifier by the Regulator,

(iii) a part of a well completed in and recovering crude oil from a zone but which has not yet been given a unique well identifier by the Regulator, or

(iv) parts of a well completed in and recovering crude oil from 2 or more zones during the period when the parts are considered by the Minister as a single well event for the purposes of this Regulation and before the Regulator makes a decision whether or not to give the parts a single unique well identifier;

(p) "zone" means any stratum or any sequence of strata that is designated by the Regulator as a zone.

(2) A reference in this Regulation to a month, whether by its name or not, shall be construed as the period commencing at 8:00 a.m. Mountain Standard Time on the first day of the month and ending immediately before 8:00 a.m. Mountain Standard Time on the first day of the next month.

AR 222/2008 s1;135/2009;199/2010;89/2013;52/2019

Application of regulation

2 Subject to section 2 of the *Petroleum Royalty Regulation, 2017*, this Regulation applies to royalty on crude oil and solution gas obtained from petroleum recovered from a well event on or after January 1, 2009 until December 31, 2026 for wells with a spud date before January 1, 2017.

AR 222/2008 s2;212/2016

s86 of the Mines and Minerals Act

3 Section 86 of the *Mines and Minerals Act* applies to all agreements granting petroleum and natural gas rights or petroleum rights and to crude oil obtained from petroleum recovered pursuant to those agreements.

Categories and densities of crude oil

4(1) The categories of crude oil and the density of each category are as specified in the following Table:

Crude Oil Category and Density Table

Category of Crude Oil	Density
light oil	less than 850 kilograms per cubic metre
medium oil	greater than or equal to 850 kilograms per cubic metre and less than 900 kilograms per cubic metre
heavy oil	greater than or equal to 900 kilograms per cubic metre and less than 925 kilograms per cubic metre
ultra heavy oil	greater than or equal to 925 kilograms per cubic metre

(2) The category for crude oil recovered from a well event during a month is determined by the Minister based on density information included in records provided to the Minister by the Regulator.

(3) In making a determination under subsection (2), the Minister may request and consider density information from the Alberta Petroleum Marketing Commission and the operator.

(4) If density information is not available to make a determination under subsection (2), the category for crude oil recovered from a well event during a month is light oil.

AR 222/2008 s4;89/2013

Prescribing par prices

5 The Minister may, with respect to any month, prescribe an amount per cubic metre as the par price for each of the following:

(a) light oil;

(b) medium oil;

(c) heavy oil;

(d) ultra heavy oil.

Royalty

6(1) The royalty on petroleum recovered from a well event pursuant to an agreement granting petroleum and natural gas rights, petroleum rights or natural gas rights is

(a) that part of the crude oil obtained from the petroleum in each month calculated in accordance with the Schedule, and

(b) that part of the solution gas obtained from the petroleum in each month calculated in accordance with the *Natural Gas Royalty Regulation, 2009*.

(2) The royalty on crude oil and solution gas must be free and clear of all deductions.

Calculation of royalty

6.1 The royalty on petroleum recovered from a well event that is also eligible production under the *New Well Royalty Regulation* is the lesser of

(a) the royalty calculated pursuant to section 6, and

(b) 5%.

AR 32/2011 s18

Approved schemes under the Enhanced Oil Recovery Royalty Regulation

6.2 Notwithstanding anything in this Regulation, the provisions of the *Enhanced Oil Recovery Royalty Regulation* apply to the calculation of royalty under this Regulation on crude oil recovered or produced from, or obtained from petroleum recovered from, a well event to which an approval as defined in the *Enhanced Oil Recovery Royalty Regulation* applies.

AR 156/2014 s16

Adjustment of royalty

7(1) Repealed AR 52/2019 s7.

(2) Repealed AR 52/2019 s7.

(3) Where, by an order made pursuant to the *Oil and Gas Conservation Act*, the maximum allowable production from a well event is determined for a period in excess of one month, the royalty that has been calculated, levied and collected on crude oil shall, on application by the operator or licensee, at the end of that period be recalculated for each month during the period that crude oil was produced from the well event, and for that purpose the production of crude oil is deemed to have been produced at the same rate as specified in the order for each month of the period.

(4) If the royalty that has been levied and collected is in excess of the amount recalculated under subsection (3), a payment of the excess amount must be made in accordance with section 15 of the *Petroleum Marketing Regulation* (AR 174/2006) as if the excess amount was an overdelivery of crude oil for the purposes of that section.

AR 222/2008 s7;52/2019

Crown tract in unit

8 If petroleum owned by the Crown is subject to a unit agreement or unit operation order, the unit area under the unit agreement or order is deemed to be a location for the purpose of determining the royalty calculated under section 2(1) of the Schedule applicable to the portion of the production allocated to any tract contained in an agreement.

Lesser royalty

9 Where in the opinion of the Lieutenant Governor in Council it is necessary or desirable in the interests of conservation or of maintaining or increasing the recovery of crude oil or natural gas from one or more well events in one or more wells, a pool or any portion of a pool, the Lieutenant Governor in Council may by order

(a) prescribe a royalty with respect to the crude oil recovered from the one or more well events, the pool or portion of the pool, that is less than the royalty that would otherwise be deliverable under this Regulation, and

(b) prescribe the period in respect of which the order is to apply.

Responsibility of operator

10 Where petroleum is recovered from a well in a month pursuant to an agreement, the operator of the well for that month is responsible as the agent of the lessee of the agreement for the delivery of the royalty on crude oil under the agreement in respect of that month.

Objections

10.1 An operator is authorized to make an objection under section 39 of the Act.

AR 170/2015 s13

Minister's decision final

11 Where any question arises pertaining to the interpretation or application of this Regulation, the Minister is the sole judge of the question and there is no appeal from the Minister's decision.

Part 2
Transitional Well Events

Definitions

11.1 In this Part,

(a) "eligible well event" means a well event that is an eligible well event under section 11.2;

(b) "measured depth" means, in respect of a well event, the longest distance, in metres, along the bore of the well from the kelly bushing of the well to

(i) the base of the deepest producing interval in the well event, or

(ii) if the production of the well event is commingled with the production of one or more other well events, to the base of the deepest producing interval in the well from which the commingled production is obtained;

(c) "transitional election" means an election made in respect of an eligible well event in accordance with section 11.3;

(d) "transitional well event" means a well event in respect of which a transitional election is in effect under this Part.

AR 135/2009 s4

Eligible well event

11.2(1) A well event that meets all of the following criteria is an eligible well event for the purposes of this Part:

(a) the well event is part of a well with a spud date on or after November 19, 2008 and on or before December 31, 2010;

(b) the measured depth of the well event, according to the records of the Regulator, is greater than or equal to 1000 metres and less than or equal to 3500 metres;

(c) the well event is not part of a well that produces oil sands or crude bitumen, other than a gas well as defined in the *Oil and Gas Conservation Rules* (AR 151/71).

(2) Information must be provided to the Minister by the licensee if required to aid in determining whether a well event meets the criteria set out in this section.

AR 135/2009 s4;199/2010;89/2013

Transitional election

11.3(1) The licensee of an eligible well event may elect, in accordance with this section, to have the royalty on crude oil and solution gas obtained from petroleum recovered from that well event determined under this Regulation in accordance with the provisions set out in the Schedule for transitional well events.

(2) The licensee must furnish the election to the Minister by electronic transmission to Petrinex in accordance with the directions of the Minister respecting the operation of the Registry not later than the last day of the first production month of the eligible well event or December 31, 2010, whichever is earlier.

(3) Despite subsection (2), if the first production month of an eligible well event occurs before July 2009, the election must be furnished under that subsection between June 4, 2009 and June 30, 2009.

AR 135/2009 s4;199/2010;140/2014

When transitional election has effect

11.4(1) A transitional election made in respect of an eligible well event has effect from the first day of the first production month of the eligible well event.

(2) Despite subsection (1), if the first production month of an eligible well event occurs before July 2009, a transitional election made in respect of that well event has effect from the first day of the first production month of the well event after December 2008.

AR 135/2009 s4

When transitional election ceases to have effect

11.5 A transitional election ceases to have effect in respect of a well event on the earlier of the following:

(a) the date on which the well event ceases to be an eligible well event;

(a.1) the date on which a licensee opts out of a transitional election in accordance with section 11.6;

(b) December 31, 2013.

AR 135/2009 s4;199/2010

Opting out of transitional election

11.6(1) The licensee of an eligible well event may opt out of a transitional election by giving notice to the Minister by electronic transmission to Petrinex between January 1, 2011 and February 15, 2011 in accordance with the directions of the Minister respecting the operation of Petrinex.

(2) If a licensee opts out of a transitional election under subsection (1), the royalty for the transitional well event shall be calculated in accordance with section 5 of the Schedule until the end of the December 2010 production month.

AR 199/2010 s6;140/2014

Part 3
Consequential Amendments, Expiry and Coming into Force

12 to **21** *(These sections amend other regulations; the amendments have been incorporated into those regulations.)*

22 Repealed AR 90/2018 s1.

Coming into force

23 This Regulation comes into force on January 1, 2009.

Schedule

Crown Royalty Share of Crude Oil

Definitions

1 In this Schedule,

(a) "Crown interest" means the percentage of Crown ownership of crude oil recovered from a well event as determined by the Minister in accordance with section 26.1 of the *Petroleum and Natural Gas Tenure Regulation* (AR 263/97);

(b) "par price" means the par price prescribed under section 5 of the Regulation applicable to the category of crude oil determined by the Minister under section 4 of the Regulation;

(c) "quantity" means the monthly production in cubic metres of crude oil from a well event according to the records of the Regulator;

(d) "transitional well event" means a well event in respect of which a transitional election is in effect under Part 2 of this Regulation or under Part 2.1 of the *Natural Gas Royalty Regulation, 2009* (AR 221/2008).

Calculation of Crown royalty share

2(1) Subject to subsection (2), the royalty for a month is the amount calculated in accordance with the following formula:

$$\text{royalty in cubic metres} = (r_p\% + r_q\%) \times \text{quantity} \times \text{Crown interest}$$

where

$r_p\%$ is the percentage rate for price calculated in accordance with section 3 of this Schedule;

$r_q\%$ is the percentage rate for quantity calculated in accordance with section 4 of this Schedule.

(2) Where the calculation of $(r_p\% + r_q\%)$

(a) is less than 0%, the amount is 0%, or

(b) is more than

(i) 50%, the amount is 50%, in the case of a production month prior to and including the December 2010 production month, or

(ii) 40%, the amount is 40%, in the case of a production month commencing with and subsequent to the January 2011 production month.

Calculation of rate for price

3(1) In the case of a production month prior to and including the December 2010 production month, the r_p% for the purposes of section 2 of this Schedule is calculated in accordance with the following Table:

Rate for Price Table 1

Par Price	Formula
par price greater than zero and less than or equal to $250.00 per cubic metre	$r_p\% = \big($(par price – 190.00) x 0.0006$\big)$ x 100
par price greater than $250.00 per cubic metre and less than or equal to $400.00 per cubic metre	$r_p\% = \big[\big($(par price – 250.00) x 0.0010$\big)$ + 0.0360$\big]$ x 100
par price greater than $400.00 per cubic metre	$r_p\% = \big[\big($(par price – 400.00) x 0.0005$\big)$ + 0.1860$\big]$ x 100

(2) In the case of a production month commencing with and subsequent to the January 2011 production month, the r_p% for the purpose of section 2 of this Schedule is calculated in accordance with the following Table:

Rate for Price Table 2

Par Price	Formula
par price greater than zero and less than or equal to $250.00 per cubic metre	$r_p\% = \big($(par price – 190.00) x 0.0006$\big)$ x 100
par price greater than $250.00 per cubic metre and less than or equal to $400.00 per cubic metre	$r_p\% = \big[\big($(par price – 250.00) x 0.0010$\big)$ + 0.0360$\big]$ x 100
par price greater than $400.00 per cubic metre and less than or equal to $535.00 per cubic	$r_p\% = \big[\big($(par price – 400.00) x 0.0005$\big)$ + 0.1860$\big]$ x 100

metre	
par price greater than $535.00 per cubic metre	$r_p\% = \left[\left((\text{par price} - 535.00) \times 0.0003\right) + 0.2535\right] \times 100$

(3) Where the $r_p\%$ calculated under subsections (1) or (2) exceeds 35%, the $r_p\%$ is deemed to be 35%.

Calculation of rate for quantity

4(1) The $r_q\%$ for the purpose of section 2 of this Schedule is calculated in accordance with the following Table:

Rate for Quantity Table

Quantity	Formula
quantity greater than zero and less than or equal to 106.4 cubic metres	$r_q\% = \left((\text{quantity} - 106.4) \times 0.0026\right) \times 100$
quantity greater than 106.4 cubic metres and less than or equal to 197.6 cubic metres	$r_q\% = \left((\text{quantity} - 106.4) \times 0.0010\right) \times 100$
quantity greater than 197.6 cubic metres and less than or equal to 304.0 cubic metres	$r_q\% = \left[\left((\text{quantity} - 197.6) \times 0.0007\right) + 0.0912\right] \times 100$
quantity greater than 304.0 cubic metres	$r_q\% = \left[\left((\text{quantity} - 304.0) \times 0.0003\right) + 0.1657\right] \times 100$

(2) Where the $r_q\%$ calculated under subsection (1) exceeds 30%, the $r_q\%$ is deemed to be 30%.

Calculation of Crown royalty share for transitional well events

5(1) Notwithstanding section 2 of this Schedule, and subject to subsection (2), the royalty for a month for a transitional well event is the amount calculated in accordance with the following formula:

$$\text{royalty in cubic metres} = (r_p\% + r_q\%) \times \text{quantity} \times \text{Crown interest}$$

where

$r_p\%$ is the percentage rate for price calculated in accordance with section 6 of this Schedule;

$r_q\%$ is the percentage rate for quantity calculated in accordance with section 7 of this Schedule.

(2) Where the calculation of (r_p% + r_q%)

(a) is less than 0%, the amount is 0%, or

(b) is more than 50%, the amount is 50%.

Calculation of rate for price for transitional well events

6(1) The r_p% for the purpose of section 5 of this Schedule is calculated in accordance with the following Table:

Rate for Price Table for Transitional Well Events

Par Price	Formula
par price greater than zero and less than or equal to $250.00 per cubic metre	$r_p\% = \left((\text{par price} - 210.00) \times 0.00035\right) \times 100$
par price greater than $250.00 per cubic metre and less than or equal to $350.00 per cubic metre	$r_p\% = \left[\left((\text{par price} - 250.00) \times 0.0001\right) + 0.0140\right] \times 100$
par price greater than $350.00 per cubic metre	$r_p\% = \left[\left((\text{par price} - 350.00) \times 0.00005\right) + 0.0240\right] \times 100$

(2) Where the r_p% calculated under subsection (1) exceeds 35%, the r_p% is deemed to be 35%.

Calculation of rate for quantity for transitional well events

7(1) The r_q% for the purpose of section 5 of this Schedule is calculated in accordance with the following Table:

Rate for Quantity Table for Transitional Well Events

Quantity	Formula
quantity greater than zero and less than or equal to 30.4 cubic metres	$r_q\% = \left((\text{quantity} - 30.4) \times 0.0013\right) \times 100$
quantity greater than 30.4 cubic metres and	$r_q\% = \left((\text{quantity} -$

less than or equal to 152.0 cubic metres	30.4) x 0.0013$\big)$ x 100
quantity greater than 152.0 cubic metres and less than or equal to 273.6 cubic metres	r_q% = $\big[\big($(quantity – 152.0) x 0.0008$\big)$ + 0.1581$\big]$ x 100
quantity greater than 273.6 cubic metres	r_q% = $\big[\big($(quantity – 273.6) x 0.0002$\big)$ + 0.2554$\big]$ x 100

(2) Where the r_q% calculated under subsection (1) exceeds 35%, the r_q% is deemed to be 35%.

AR 222/2008 Sched.;135/2009;199/2010;89/2013

Province of Alberta

MINES AND MINERALS ACT

PETROLEUM ROYALTY REGULATION, 2017

Alberta Regulation 212/2016

With amendments up to and including Alberta Regulation 52/2019

Current as of September 30, 2019

Office Consolidation

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(Consolidated up to 52/2019)

ALBERTA REGULATION 212/2016

Mines and Minerals Act

PETROLEUM ROYALTY REGULATION, 2017

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Part 1
General

Interpretation

1(1) In this Regulation,

(a) "crude oil" means a mixture mainly of pentanes and heavier hydrocarbons

(i) that may be contaminated with sulphur compounds,

(ii) that is recovered or is recoverable at a well from an underground reservoir, and

(iii) that is liquid at the conditions under which its volume is measured or estimated,

and includes all other hydrocarbon mixtures so recovered or recoverable except natural gas, field condensate or crude bitumen;

(b) "field condensate" means field condensate as defined in the *Natural Gas Royalty Regulation, 2017*;

(c) "heavy oil" means the category of crude oil determined under section 4 as heavy oil;

(d) repealed AR 52/2019 s8;

(e) "initial activity" means all drilling and fracture operations in a well resulting in a TVD, TLL or TPPe that occur within one year of the well first commencing production;

(f) "licence" means a licence for a well issued under the *Oil and Gas Conservation Act*;

(g) "licensee" means the holder of a licence according to the records of the Regulator and includes a trustee or receiver-manager of property of a licensee;

(h) "light oil" means the category of crude oil determined under section 4 as light oil;

(i) "medium oil" means the category of crude oil determined under section 4 as medium oil;

(j) "operator", in respect of a well, means the person who is the operator according to the records of the Department;

(k) "opted in well" means a well that has been approved as an early opted in well by the Minister under Part 2 of this Regulation or under Part 3 of the *Natural Gas Royalty Regulation, 2017*;

(l) "par price" means the par price determined under section 5 applicable to the category of crude oil determined by the Minister under section 4;

(m) "pool" means a natural underground reservoir containing or appearing to contain an accumulation of petroleum or natural gas separated or appearing to be separated from any other such accumulation;

(n) "producing interval" means a perforation from which production is obtained;

(o) "production month" means the month in which petroleum is recovered;

(p) "re-entry" means all drilling or fracture operations in a well resulting in a change to TVD, TLL or TPPe that occurs at least one year after the first date a well commences production after initial activity or previous re-entry activity;

(q) "Regulator" means the Alberta Energy Regulator;

(r) "royalty" means royalty reserved to the Crown in right of Alberta;

(s) "solution gas" means

(i) gas that is separated from crude oil after recovery from a well, and

(ii) gas that is dissolved in crude oil under initial reservoir conditions and includes any of that gas that evolves as a result of changes in pressure or temperature, or both, due to human disturbance;

(t) "TLL" means the total lateral length of a well in metres as determined by the Minister

(i) for a single-leg well by subtracting the TVD from the TMD, and

(ii) for a multi-leg well by subtracting the deepest TVD in the well from the TMD;

(u) "TMD" means the total measured depth of a well in metres calculated by using the measured depth of the well bore and adding the length of any legs in the well measured from the end of the leg back to the first unique kickoff point for that leg;

(v) "TPPe" means the total proppant placed in a well in tonnes as determined by the Minister using the records of the Regulator and the proppant equivalent prescribed by the Minister;

(w) "TVD" means the true vertical depth of a well in metres determined by measuring the vertical distance in metres in a perpendicular line from the kelly bushing of a well to the base of the deepest drilled leg;

(x) "ultra-heavy oil" means the category of crude oil determined under section 4 as ultra-heavy oil;

(y) "well event" means

(i) a part of a well completed in a zone and given a unique well identifier by the Regulator,

(ii) parts of a well completed in 2 or more zones and given a single unique well identifier by the Regulator,

(iii) a part of a well completed in and recovering crude oil from a zone but which has not yet been given a unique well identifier by the Regulator, or

(iv) parts of a well completed in and recovering crude oil from 2 or more zones during the period when the parts are considered by the Minister as a single well event for the purposes of this Regulation and before the Regulator makes a decision whether or not to give the parts a single unique well identifier;

(z) "zone" means any stratum or any sequence of strata that is designated by the Regulator as a zone.

(2) A reference in this Regulation to a month, whether by its name or not, shall be construed as the period commencing at 8:00 a. m. Mountain Standard Time on the first day of the month and ending immediately before 8:00 a.m. Mountain Standard Time on the first day of the next month.

AR 212/2016 s1;52/2019

Application of Regulation

2 This Regulation applies to royalty on crude oil and solution gas obtained from petroleum

(a) recovered from a well on or after January 1, 2017, and

(i) if the well has a spud date of January 1, 2017 or later;

(ii) if the well has a spud date earlier than January 1, 2017 and has been subject to re-entry on or after January 1, 2017 and either or both of the following apply:

(A) the well has been given a new spud or finished drilling date and the well has been given a new TVD or TMD;

(B) new proppant has been placed in the well that meets the minimum equivalency threshold set out in the Schedule,

as long as the well has a C* amount in dollars remaining as calculated under section 2 of the Schedule;

(b) recovered from a well on or after July 13, 2016 if the well has been approved as an opted in well, and

(c) recovered from a well on or after January 1, 2027.

Section 86 of the Mines and Minerals Act

3 Section 86 of the *Mines and Minerals Act* applies to all agreements granting petroleum and natural gas rights or petroleum rights and to crude oil obtained from petroleum recovered pursuant to those agreements.

Categories and densities of crude oil

4(1) The categories of crude oil and the density of each category are as specified in the following Table:

Crude Oil Category and Density Table

Category of Crude Oil	Density
light oil	less than 850 kilograms per cubic metre
medium oil	greater than or equal to 850 kilograms per cubic metre and less than 900 kilograms per cubic metre
heavy oil	greater than or equal to 900 kilograms per cubic metre and less than 925 kilograms per cubic metre
ultra-heavy oil	greater than or equal to 925 kilograms per cubic metre

(2) The category for crude oil recovered from a well event during a month is determined by the Minister based on density information included in records provided to the Minister by the Regulator.

(3) In making a determination under subsection (2), the Minister may request and consider density information from the Alberta Petroleum Marketing Commission and the operator.

(4) If density information is not available to make a determination under subsection (2), the category for crude oil recovered from a well event during a month is light oil.

Prescribing par prices

5 The Minister may, with respect to any month, determine an amount per cubic metre as the par price for each of the following:

(a) light oil;

(b) medium oil;

(c) heavy oil;

(d) ultra-heavy oil.

Royalty

6(1) The royalty on petroleum recovered from a well event pursuant to an agreement granting petroleum and natural gas rights, petroleum rights or natural gas rights is

(a) that part of the crude oil obtained from the petroleum in each month calculated in accordance with the Schedule, and

(b) that part of the solution gas obtained from the petroleum in each month calculated in accordance with the *Natural Gas Royalty Regulation, 2009* or the *Natural Gas Royalty Regulation, 2017*, as applicable.

(2) The royalty on crude oil and solution gas must be free and clear of all deductions.

Calculation of royalty

7 The royalty on petroleum recovered from a well event that is also eligible production under the *New Well Royalty Regulation* is the lesser of

(a) the royalty percentage calculated pursuant to section 6, and

(b) 5%.

Approved schemes under the Enhanced Oil Recovery Royalty Regulation, the Enhanced Hydrocarbon Recovery Royalty Regulation and the Emerging Resources Royalty Regulation

8(1) Notwithstanding anything in this Regulation, the *Enhanced Oil Recovery Royalty Regulation* applies to the calculation of royalty under this Regulation on crude oil recovered or produced from, or obtained from petroleum recovered from, a well event to which an approval as defined in the *Enhanced Oil Recovery Royalty Regulation* applies.

(2) Notwithstanding anything in this Regulation, the *Enhanced Hydrocarbon Recovery Royalty Regulation* applies to the calculation of royalty under this Regulation on crude oil recovered or produced from, or obtained from petroleum recovered from, a well event to which an approval as defined in the *Enhanced Hydrocarbon Recovery Royalty Regulation* applies.

(3) Notwithstanding anything in this Regulation, the *Emerging Resources Royalty Regulation* applies to the calculation of royalty under this Regulation on crude oil recovered or produced from, or obtained from petroleum recovered from, a well to which an approval as defined in the *Emerging Resources Royalty Regulation* applies.

Adjustment of royalty

9(1) Repealed AR 52/2019 s8.

(2) Repealed AR 52/2019 s8.

(3) Where, by an order made pursuant to the *Oil and Gas Conservation Act*, the maximum allowable production from a well event is determined for a period in excess of one month, the royalty that has been calculated, levied and collected on crude oil shall, on application by the operator or licensee, at the end of that period be recalculated for each month during the period that crude oil was produced from the well event, and for that purpose the production of crude oil is deemed to have been produced at the same rate as specified in the order for each month of the period.

(4) If the royalty that has been levied and collected is in excess of the amount recalculated under subsection (3), a payment of the excess amount must be made in accordance with section 15 of the *Petroleum Marketing Regulation* (AR 174/2006) as if the excess amount was an overdelivery of crude oil for the purposes of that section.

AR 212/2016 s9;52/2019

Crown tract in unit

10 If petroleum owned by the Crown is subject to a unit agreement or unit operation order, the unit area under the unit agreement or order is deemed to be a location for the purpose of determining the royalty calculated under sections 3 and 4 of the Schedule applicable to the portion of the production allocated to any tract contained in an agreement.

Lesser royalty

11 Where in the opinion of the Lieutenant Governor in Council it is necessary or desirable in the interests of conservation or of maintaining or increasing the recovery of crude oil or natural gas from one or more well events in one or more wells, a pool or any portion of a pool, the Lieutenant Governor in Council may by order

(a) prescribe a royalty with respect to the crude oil recovered from the one or more well events, the pool or portion of the pool, that is less than the royalty that would otherwise be deliverable under this Regulation, and

(b) prescribe the period in respect of which the order is to apply.

Responsibility of operator

12 Where petroleum is recovered from a well in a month pursuant to an agreement, the operator of the well for that month is responsible as the agent of the lessee of the agreement for the delivery of the royalty on crude oil under the agreement in respect of that month.

Objections

13 An operator is authorized to make an objection under section 39 of the Act.

Minister's decision final

14 Where any question arises pertaining to the interpretation or application of this Regulation, the Minister is the sole judge of the question and there is no appeal from the Minister's decision.

Furnishing documents to the Minister

15(1) If this Regulation requires a document to be furnished to the Minister, or an amount to be paid to the Crown, on or before a day, the document is deemed to be furnished or the amount is deemed to be paid, as the case may be, if it is received by the Department on or before that day.

(2) Unless otherwise directed by the Minister, where any document required or permitted to be furnished under this Regulation must be provided in a form required by the Minister, the document must

(a) contain complete and accurate information required by the form, and

(b) be completed in accordance with any general directions given by the Minister or any instructions shown in the form.

(3) The Minister may refuse to accept a document that does not meet the requirements of subsection (2) and in that case the document is, for the purposes of this Regulation, deemed not to have been furnished.

Part 2
Opted In Wells

Definitions

16 In this Part, "eligible well" means a well that is an eligible well under section 17.

Eligible well

17(1) A well that meets all of the following criteria is an eligible well for the purposes of this Part:

(a) a well with a spud date of July 13, 2016 or later but on or before December 31, 2016;

(b) a well that does not produce oil sands or crude bitumen;

(c) the Minister is of the opinion that the well would not have been spud between July 13, 2016 and December 31, 2016 without the approval for opt in by the Minister under this Part.

(d) the well is not subject to re-entry.

(2) Information must be provided to the Minister by the licensee if required to aid in determining whether a well meets the criteria set out in this section.

Application

18(1) The licensee of an eligible well may apply, in accordance with this section, to have the royalty on crude oil and solution gas obtained from petroleum recovered from that well determined under this Regulation in accordance with the provisions set out in the Schedule.

(2) The licensee must furnish the application in writing to the Minister before the well's spud date and on or after July 13, 2016.

Approval

19 On receiving an application under section 18, the Minister may approve an application for opt in for an eligible well if, in the opinion of the Minister, it is in the public interest to do so.

When opt in has effect

20 An approval by the Minister in respect of an eligible well has effect from the first day of the first production month of the eligible well.

When opt in approval ceases to have effect

21 An opt in approval by the Minister ceases to have effect in respect of a well on the date on which the well ceases to be an eligible well.

Part 3
Consequential Amendments and Coming into Force

Consequential amendment

22 The *Enhanced Oil Recovery Royalty Regulation* (AR 156/2014) is amended in section 5 by adding "or under section 3 of the Schedule to the *Petroleum Royalty Regulation, 2017*" **after** "*Petroleum Royalty Regulation, 2009*".

Consequential amendment

23 The *Petroleum Royalty Regulation, 2009* (AR 222/2008) is amended by repealing section 2 and substituting the following:

Application of regulation

2 Subject to section 2 of the *Petroleum Royalty Regulation, 2017*, this Regulation applies to royalty on crude oil and solution gas obtained from petroleum recovered from a well event on or after January 1, 2009 until December 31, 2026 for wells with a spud date before January 1, 2017.

Coming into force

24 This Regulation is deemed to have come into force on July 13, 2016.

Schedule
Crown Royalty Share of Crude Oil

Definitions

1 In this Schedule,

(a) "ACCI" means the Alberta Capital Cost Index for a year determined by the Minister on an annual basis;

(b) "Crown interest" means the percentage of Crown ownership of crude oil recovered from a well event as determined by the Minister in accordance with section 26.1 of the *Petroleum and Natural Gas Tenure Regulation* (AR 263/97);

(c) "C*" means the drilling and completion cost allowance in dollars calculated for a well under section 2 of this Schedule;

(d) "quantity" means the monthly production in cubic metres of crude oil from a well according to the records of the Regulator;

(e) "TVDa" means the average of the true vertical depths of all drilled legs.

Calculation of C* for a Well

2(1) The C* for a well where the TVD of the well is greater than 2000 metres is the dollar amount calculated in accordance with the following formula:

C* = ACCI x ((1170 x (TVD - 249)) + (3120 x (TVD - 2000)) + (Y x 800 x TLL) + (0.6 x TVDa x TPPe))

where

Y is the linear factor for multi-leg wells, determined in accordance with the following formula:

Y = 1.39 - 0.04 x (TMD/TVDa)

but,

(a) if the ratio of TMD/TVDa is less than 10, Y equals 1

(b) if Y is calculated as less than 0.24, Y equals 0.24

If TVD is equal to or less than 249, (TVD - 249) equals 0.

(2) The C* for a well where the TVD of the well is 2000 metres or less is the dollar amount calculated in accordance with the following formula:

C* = ACCI x ((1170 x (TVD - 249)) + (Y x 800 x TLL) + (0.6 x TVDa x TPPe))

where

Y is the linear factor for multi-leg wells, determined in accordance with the following formula:

Y = 1.39 - 0.04 x (TMD/TVDa)

but,

(a) if the ratio of TMD/TVDa is less than 10, Y equals 1;

(b) if Y is calculated as less than 0.24, Y equals 0.24.

If TVD is equal to or less than 249, (TVD - 249) equals 0.

(3) The incremental C* for a well where re-entry results in lengthening only is the dollar amount calculated in accordance with the following formula:

C* = ACCI x (1000 x TLLi)

where

TLLi is the TLL of the incremental drilling done since the last drilling occurrence that resulted in a calculation of C* under this regulation.

(4) Where re-entry results in fracturing only and at least the minimum amount of proppant equivalent of 50 tonnes for a horizontal well or 10 tonnes for a vertical well is placed, the incremental C* for the well is the dollar amount calculated in accordance with the following formula:

Incremental C* = ACCI x (1.5 x (0.6 x TVDp x TPPi) + 150,000)

where

TPPi is the TPPe of the incremental proppant placed since the last proppant was placed that resulted in a calculation of C* under this regulation;

TVDp is the average of the true vertical depth of the legs where incremental proppant has been placed.

(5) The incremental C* for a well, where a re-entry results in fracturing, at least the minimum amount of proppant equivalent of 50 tonnes for a horizontal well or 10 tonnes for a vertical well is placed, and the well is also lengthened, is the dollar amount calculated as follows:

(a) for wells that have a TVD greater than 2000 before and after lengthening:

Incremental C* = C*new – C*prime

where

C*new is the dollar value calculated using the formula in subsection (1), but where TVD, TVDa, TPPe, TLL and Y are measured or calculated for the well after the re-entry and the ACCI is the ACCI for the year of the re-entry;

C*prime is the dollar value calculated using the formula in subsection (1), but where TVD, TVDa, TPPe, TLL and Y are measured or calculated for the well immediately before the re-entry and the ACCI is the ACCI for the year of the re-entry

(b) for wells that have a TVD of 2000 metres or less before lengthening, but a TVD greater than 2000 metres after lengthening:

Incremental C* = C*new – C*prime

where

C*new is the dollar value calculated using the formula in subsection (1), but where TVD, TVDa, TPPe, TLL and Y are measured or calculated for the well after the re-entry and the ACCI is the ACCI for the year of the re-entry;

C*prime is the dollar value calculated using the formula in subsection (2), but where TVD, TVDa, TPPe, TLL and Y are measured or calculated for the well immediately before the re-entry and the ACCI is the ACCI for the year of the re-entry

(c) for wells that have a TVD of 2000 metres or less before and after lengthening:

Incremental C* = C*new – C*prime

where

C*new is the dollar value calculated using the formula in subsection (2), but where TVD, TVDa, TPPe, TLL and Y are measured or calculated for the well after the re-entry and the ACCI is the ACCI for the year of the re-entry; and

C*prime is the dollar value calculated using the formula in subsection (2), but where TVD, TVDa, TPPe, TLL and Y are measured or calculated for the well immediately before the re-entry and the ACCI is the ACCI for the year of the re-entry.

(6) For the purposes of this section a vertical well is a well that is not determined to be a horizontal well by the Minister under subsection (7).

(7) For the purposes of this section a horizontal well is a well that is determined to be a horizontal well by the Minister based on:

(a) the well having at least one well event classified by the Regulator as “horizontal”, and

(b) according to the records of the Regulator, the well having at least one well event that was drilled at a wellbore inclination angle exceeding 80 degrees.

(8) Incremental drilling and usage of proppant after the date the C* for a well is first calculated will result in an increase in the C* for a well as a result of a recalculation of the C* under whichever of subsections (3), (4) or (5) are applicable to the incremental drilling and usage of proppant.

(9) A well with a spud date before January 1, 2017, other than an opted in well, that is subject to re-entry will receive a C*, but only for the incremental drilling done in the well and for the proppant used on the well after January 1, 2017.

(10) For further clarity, any re-entry activity that takes place within the year following the first date a well commences production after a previous re-entry will result in a recalculation of incremental C* under whichever of subsections (3), (4) or (5) are applicable instead of a new incremental C*.

Calculation of Crown royalty share when C* greater than zero

3(1) Subject to subsection (2), the royalty for a month is the amount calculated in accordance with the following formula:

royalty in cubic metres = (5%) x quantity x Crown interest

(2) Royalty will be calculated according to subsection (1) until a well's total revenue from all hydrocarbon products as determined by the Minister equals C* or until a well has been abandoned according to the records of the Regulator, whichever comes first.

(3) Once a well's total revenue from all hydrocarbon products as determined by the Minister equals C*, royalty for all subsequent months will be calculated under

(a) section 4 of this Schedule for

(i) wells spud on or after January 1, 2017, and

(ii) opted in wells, and

(iii) all wells on or after January 1, 2027.

(b) the *Petroleum Royalty Regulation, 2009* for wells that were spud before January 1, 2017 and are not opted in wells until December 31, 2026.

(4) Revenue from a well will be determined by multiplying the volumes of all the hydrocarbons produced from the well by their

respective par prices for the time period in which the well has a C* greater than or equal to the revenue determined under this subsection. For crude oil the volumes used will be produced volumes and for natural gas and natural gas products the volumes used will be allocated volumes.

(5) The volumes referenced in subsection (4) include freehold volumes.

Calculation of Crown royalty share post C*

4(1) Subject to subsection (2), the royalty for a month is the amount calculated in accordance with the following formula:

royalty in cubic metres = (r_p% + r_q%) x quantity x Crown interest

where

r_p% is the percentage rate for price calculated in accordance with section 5 of this Schedule;

r_q% is the percentage rate for oil equivalent volume calculated in accordance with section 6 of this Schedule.

(2) Where the calculation of (r_p% + r_q%)

(a) is less than 5%, the amount is 5%, or

(b) is more than 40%, the amount is 40%.

Calculation of rate for price

5(1) In the case of a production month commencing with and subsequent to the January 2017 production month, the r_p% for the purpose of section 4 of this Schedule is calculated in accordance with the following Table:

Rate for Price Table

Par Price	Formula
par price less than or equal to $251.70 per cubic metre	r_p% = 10%
par price greater than $251.70 per cubic metre and less than or equal to $409.02 per cubic metre	r_p% = [(par price – 251.70) x 0.00071+0.10000] x 100
par price greater than $409.02 per cubic metre and less than or equal to $723.64 per cubic metre	r_p% = [(par price – 409.02) x 0.00039 + 0.21170] x 100

par price greater than $723.64 per cubic metre	$r_p\% = [(\text{par price} - 723.64) \times 0.00020 + 0.33440] \times 100$
Maximum/Default	40%

Calculation of rate for oil equivalent volume

6 The $r_q\%$ for the purpose of section 4 of this Schedule is calculated in accordance with the following Table:

Rate for Oil Equivalent Volume Table

Oil Equivalent Volume	Formula
oil equivalent volume greater than zero and less than 194.0 cubic metres	$r_q\% = [(\text{oil equivalent volume} - 194.0) \times 0.001350] \times 100$
oil equivalent volume greater than or equal to 194.0 cubic metres	$r_q\% = 0\%$

Oil equivalent volume is the total of all crude oil volumes, field condensate volumes and gas volumes using a conversion factor of 1.7811.

Reporting requirements

7 For the purposes of determining royalty under this Schedule information required by the Minister must be provided to the Minister by the licensee or operator in the form and in the time prescribed by the Minister.

AR 212/2016 Sched.;27/2017

Printed on Recycled Paper

PETROLEUM MARKETING ACT

Chapter P-10

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) "agreement" has the same meaning as in the *Mines and Minerals Act*;

indemnities, to arise in the normal course of the performance of the agreement if the agreement is properly performed.

(3) The Commission may, with the approval of the Lieutenant Governor in Council, provide indemnities in addition to those authorized by subsections (1) and (2).

2013 c16 s7

Delegation

7 Subject to the regulations, the Commission may in writing delegate any power, duty or function conferred or imposed on it by this Act or any other Act or any regulation or rules to any person.

RSA 2000 cP-10 s7;2012 cR-17.3 s100;2013 c16 s8

Commission as Crown agent

8(1) The Commission is for all purposes an agent of the Crown in right of Alberta and its powers may be exercised only as an agent of the Crown in right of Alberta.

(2) An action or other legal proceeding in respect of any right or obligation acquired or incurred by the Commission on behalf of the Crown in right of Alberta, whether in its name or in the name of the Crown in right of Alberta, may be brought or taken by or against the Commission, in the name of the Commission, in any court that would have jurisdiction if the Commission were not an agent of the Crown.

RSA 1980 cP-5 s7

Fiscal year

9 The fiscal year of the Commission is the calendar year, unless otherwise prescribed by the Lieutenant Governor in Council.

RSA 1980 cP-5 s9

Records and accounts

9.1 The Commission shall prepare and retain records and accounts in accordance with the regulations as required by the Minister.

2013 c16 s9

Information to the Commission

9.2(1) The Lieutenant Governor in Council may make regulations respecting the keeping of and the furnishing to the Commission of information that relates to hydrocarbon substances and that is required for the purposes of

(a) evaluating, formulating or administering any policy or program of

(i) the Crown, or

Definition

14(1) In section 16, "crude oil" means the crude oil component of petroleum.

(2) This section is repealed on Proclamation.

RSA 2000 cP-10 s14;2009 c20 s9

Dealing with Crown's royalty share

15 Subject to the regulations, the Commission shall

(a) accept delivery of the Crown's royalty share of a hydrocarbon substance required to be delivered to the Commission pursuant to an agreement, a contract under section 9(a) of the *Mines and Minerals Act* or an enactment,

(b) deal with the Crown's royalty share of the hydrocarbon substance in a manner that is, in the Commission's opinion, in the public interest of Alberta, and

(c) engage in other hydrocarbon-related activities in a manner that is, in the Commission's opinion, in the public interest of Alberta.

RSA 2000 cP-10 s15;2009 c20 s9;2013 c16 s14

Direction to provide goods and services

16(1) The Commission may, in accordance with the regulations, direct a supplier to provide goods or services or both.

(2) The Commission may include in a direction under subsection (1) any terms and conditions that it considers appropriate.

(3) The Commission may pay consideration for the provision of the goods or services in accordance with the regulations.

(4) A supplier who receives a direction under subsection (1) shall comply with

(a) the direction, and

(b) any regulations relating to the provision of the goods or services.

(5) Where the Commission gives a direction under subsection (1) and the Commission is unable to reach an agreement with the supplier as to the just and reasonable consideration to be paid by the Commission for the goods or services, the Alberta Utilities Commission may, on the application of the Commission or the supplier, fix charges instead of consideration in accordance with the regulations.

(6) No compensation is payable for goods or services provided under this section other than consideration or charges instead of consideration that are paid or fixed under this section.

(7) A supplier who contravenes subsection (4) is guilty of an offence and is liable to a fine of not more than $5000 for each day that the contravention continues.

(8) Where a supplier contravenes subsection (4), the Commission may, whether or not the supplier has been convicted of an offence in respect of the contravention, apply to the Court of King's Bench for an order requiring the supplier to comply with the direction or the regulations, as the case may be.

(9) Where

(a) a supplier is the lessee under an agreement, and

(b) a direction is given to the supplier under subsection (1) calling for goods or services to be provided in respect of a hydrocarbon substance that is, in whole or in part, the Crown's royalty share of a mineral payable pursuant to the agreement,

a contravention of subsection (4) by the supplier is, for the purposes of section 45(1)(c)(i) of the *Mines and Minerals Act*, deemed to be a failure to comply with that Act in relation to the agreement, whether or not the supplier has been convicted of an offence in respect of the contravention.

RSA 2000 cP-10 s16; 2007 cA-37.2 s82(21);2009 c20 s9; 2009 c53 s130;2012 cR-17.3 s100;AR 217/2022

17 Repealed 2009 c20 s9.

Discharge of lessee's liability

18(1) Subject to this section and the regulations, the delivery to the Commission of the Crown's royalty share of a hydrocarbon substance recovered pursuant to an agreement operates to discharge the lessee with respect to the lessee's liability to pay that royalty to the Crown in right of Alberta.

(2) Where money is paid to the Commission pursuant to regulations made under section 19(1)(e) as provided for under section 19(2)(a),

(a) the money is deemed to be payable under an agreement and is for all other purposes deemed to be a money royalty

payable on the hydrocarbon substance under an agreement, and

(b) the payment of the money operates to discharge the lessee of an agreement with respect to the lessee's liability to pay royalty on the hydrocarbon substance to the Crown in right of Alberta to the extent that the money represents the value of the royalty on the hydrocarbon substance as determined under the regulations.

RSA 2000 cP-10 s18;2009 c20 s9

Regulations

19(1) The Lieutenant Governor in Council may make regulations

(a) specifying substances or classes of substances as hydrocarbon substances for the purposes of this Act;

(a.1) respecting delegation by the board under section 2;

(a.2) prescribing powers, duties and functions that may not be delegated under section 2;

(a.3) respecting the providing of indemnities by the Commission under section 6.3(1) and (2);

(a.4) respecting delegations by the Commission under section 7;

(b) respecting the preparation and retention of records and accounts under section 9.1;

(b.1) respecting directives issued by the Minister under section 12.2(1);

(c) respecting information to be furnished to the Commission, the persons required to furnish that information, the form in which that information must be furnished and the time within which the information must be furnished;

(d) respecting the imposition of pecuniary penalties payable to the Commission, the circumstances in which the penalties may be imposed, the persons liable to pay the penalties and the time by which the penalties must be paid;

(e) respecting the respective rights, powers, liabilities and obligations of the Commission, lessees and others in the event that the quantity of a hydrocarbon substance delivered to the Commission in a month is less than or greater than the Crown's royalty share of the hydrocarbon substance actually payable in respect of that month;

(f) providing for any matter in connection with or incidental to the administration of sections 15 to 18.

(2) Without limiting the powers of the Lieutenant Governor in Council under subsection (1)(e), regulations may be made under that subsection

(a) respecting the powers of the Commission, in the event of a deficiency in deliveries of the quantity of the Crown's royalty share of a hydrocarbon substance under an agreement in a month, notwithstanding any provision to the contrary in the *Mines and Minerals Act* or a regulation under that Act,

(i) to accept the payment of money instead of delivery of the deficient quantity, or

(ii) to direct the payment to the Commission of an amount of money determined by it in accordance with the regulations as the value to the Crown of the deficient quantity;

(b) respecting the powers of the Commission, in the event of deliveries of a hydrocarbon substance to the Commission in a month in excess of the quantity of the Crown's royalty share of the hydrocarbon substance for that month, to act as the agent of the owner of the excess quantity for the disposition and delivery of the excess quantity to a purchaser in accordance with the regulations.

(3) A failure to comply with the regulations under this section in respect of an agreement is, for the purposes of section 45(1)(c)(i) of the *Mines and Minerals Act*, deemed to be a failure to comply with that Act in relation to the agreement, whether or not the lessee has been convicted of an offence in respect of the contravention.

(4) Reports and other information supplied to the Commission pursuant to regulations under this section are, for the purposes of section 38 of the *Mines and Minerals Act*, deemed to be supplied under that Act.

RSA 2000 cP-10 s19;2009 c20 s9;2013 c16 s15

Regulations re provision of goods and services

19.1(1) The Lieutenant Governor in Council may make regulations

(a) specifying goods or services or classes of goods or services for the purposes of section 16;

(b) specifying persons or classes of persons as suppliers for the purposes of section 16;

(c) respecting the giving of directions to suppliers and respecting the provision of goods or services by suppliers under section 16;

(d) respecting the consideration to be paid by the Commission under section 16(3) and the fixing of charges instead of consideration by the Alberta Utilities Commission;

(e) respecting applications to the Alberta Utilities Commission for the purposes of section 16(5);

(f) respecting the rights, powers, liabilities and obligations of the Commission, suppliers and others in relation to the provision of goods or services and consideration for goods or services or charges instead of consideration under section 16.

(2) A failure to comply with the regulations under this section in respect of an agreement is, for the purposes of section 45(1)(c)(i) of the *Mines and Minerals Act*, deemed to be a failure to comply with that Act in relation to the agreement, whether or not the lessee has been convicted of an offence in respect of the contravention.

(3) Reports and other information supplied to the Commission pursuant to regulations under this section are, for the purposes of section 38 of the *Mines and Minerals Act*, deemed to be supplied under that Act.

2009 c20 s9

(Consolidated up to 247/2018)

ALBERTA REGULATION 174/2006

Petroleum Marketing Act
Mines and Minerals Act

PETROLEUM MARKETING REGULATION

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Definitions

1 In this Regulation,

(a) "actual deliveries", in relation to a delivery month and a battery, means the quantity of crude oil actually delivered to the Commission from the battery to a field delivery point during the delivery month, as determined by the Commission on the basis of the information in the possession of the Commission, including the final shipper's balance that related to or included that quantity;

(b) "agency contract" means a contract under which the Crown in right of Alberta and the Commission appoint a person as their agent for the purpose, among others, of marketing certain quantities of the Crown's royalty share of crude oil;

(c) "agent" or "Commission's agent" means a person appointed as an agent under an agency contract;

(d) "agreement" means an agreement as defined in the *Mines and Minerals Act*;

(e) "amendment report" means a report furnished or required to be furnished to the Commission pursuant to a notice given under section 4(5);

(f) "battery", in relation to any crude oil, means each battery at which the crude oil is measured after its recovery from a well;

(g) "Commission" means the Alberta Petroleum Marketing Commission;

(h) "Commission's field price" means

(i) with respect to royalty oil delivered to the Commission in a delivery month, the value to the Crown of the oil, in dollars per cubic metre, as

Part 2
Underdelivery and Overdelivery of Oil

Field delivery point for royalty oil

11(1) Subject to subsection (2), the place at which royalty oil shall be delivered to the Commission is prescribed as follows:

(a) if the battery at which the Crown's royalty share of crude oil is calculated is connected directly to a pipeline, the place where the royalty oil is to be delivered to the Commission is the point on the pipeline at which the battery is connected to it;

(b) if the battery at which the Crown's royalty share of crude oil is calculated is not connected directly to a pipeline, the place at which the royalty oil is to be delivered to the Commission is

(i) the nearest unloading facility connected to a pipeline, or

(ii) if there is another unloading facility connected to a pipeline entailing a higher net revenue return to the Crown, that other unloading facility.

(2) The Commission may in a particular case direct or consent to the delivery of royalty oil at a place other than that prescribed under subsection (1), either indefinitely or for a specified period.

Direction to deliver royalty deficiency

12(1) If there is an underdelivery balance at a battery for a delivery month, the Commission, by a notice given to the operator of the battery for that delivery month, may direct that the default under the agreement or agreements resulting from the deficient delivery be remedied by the delivery in kind to the Commission of crude oil in equal quantity and of like quality to the underdelivery balance

(a) in the month in which the direction is given,

(b) in a particular subsequent month, or

(c) in instalments in 2 or more particular subsequent months,

whichever is specified in the direction.

(2) A direction to an operator under subsection (1) relating to the underdelivery balance for a particular delivery month may include underdelivery balances for the same battery for any previous

delivery months if the operator to whom the direction is given was also the operator of that battery for each of those previous delivery months.

(3) The Commission may, with or without conditions, direct or consent to the postponement of delivery in kind of all or part of the volumes of royalty oil specified in a direction under subsection (1) to a later month or months and, on doing so, the direction is deemed to be amended accordingly.

(4) If a direction under subsection (1) is not complied with, then,

(a) to the extent that the quantity of crude oil delivered pursuant to the direction is less than the underdelivery balance or the aggregate of the underdelivery balances, as the case may be, specified in the direction, the Commission may, in a monthly statement, charge the operator with the payment to the Commission of an amount of money equal to, whichever of the following amounts is shown in the monthly statement,

(i) the amount calculated by multiplying the quantity of the undelivered royalty oil by the Commission's field price or respective field prices, as the case may be, for the delivery month or months in which the royalty oil was originally payable, or

(ii) the amount calculated by multiplying the quantity of the undelivered royalty oil by the Commission's field price or respective field prices, as the case may be, for the month or months in which the royalty oil should have been delivered in accordance with the direction,

and

(b) to the extent the quality of crude oil delivered pursuant to the direction is less than that required to be delivered pursuant to the direction, the Commission may, in a monthly statement, charge the operator with the payment to the Commission of an amount of money that in the Commission's opinion is equal to the difference in value between the crude oil delivered and that required to be delivered.

(5) When an amount of money becomes owing to the Commission under subsection (4), the direction under subsection (1) ceases to apply.

(6) The Commission may not give a notice under subsection (1) in respect of an underdelivery balance for a delivery month if it has

charged the operator under section 13(1) with the payment of a money amount in respect of the same underdelivery balance.

Money in lieu of royalty deficiency

13(1) If there is an underdelivery balance at a battery for a delivery month, the Commission, in a monthly statement sent to the operator of the battery, may charge the operator with the payment to the Commission of an amount of money calculated by multiplying the underdelivery balance by the Commission's field price for that underdelivery balance for that month.

(2) The Commission may not charge a battery operator with the payment of an amount of money under subsection (1) of this section in respect of an underdelivery balance for a delivery month if a notice has been given under section 12(1) in respect of the same underdelivery balance.

Money amounts owing under section 12 or 13

14(1) If the operator of a battery is charged with the payment of an amount of money owing in respect of an underdelivery balance pursuant to section 12(4) or 13(1),

(a) the obligation to pay the amount of money so charged replaces the obligation to deliver the underdelivery balance in kind to the Commission,

(b) full payment of the amount of money so charged operates to fulfil the obligation to deliver the underdelivery balance in kind to the Commission, and

(c) any crude oil delivered to the Commission in purported payment in kind of the underdelivery balance shall be dealt with by the Commission under section 15 as though it were an overdelivery of crude oil to which that section applies.

(2) If after a battery operator has been charged with the payment of a money amount under section 12(4) or 13(1) it is found that the amount owing to the Commission is greater or less than the amount charged, the Commission may adjust the amount owing to the Commission by decreasing or increasing it and cause the adjustment to be reflected in a subsequent monthly statement to the operator.

(3) Where a money amount is owing to the Commission under section 12(4) or 13(1) by reason of a charge contained in a monthly statement and the amount remains wholly or partly unpaid after the person so charged is succeeded as the operator of the battery concerned then, despite anything in section 12 or 13,

(a) the person charged with the payment of the amount, and

(b) each of that person's successors as operator of the battery,

are jointly and severally liable to the Commission for the amount or the unpaid part of the amount, as the case may be.

(4) Nothing in section 12 or 13 precludes the Commission from agreeing to accept, in lieu of payment of any money amount owing to the Commission under either of those sections, the delivery to the Commission of a quantity of crude oil having a value, based on the Commission's field price, at least equal to the money amount owing.

Overdelivery of crude oil

15(1) For the purposes of this section, there is an overdelivery of crude oil to the Commission from a battery in a delivery month if, according to the records of the Commission,

(a) the actual deliveries from the battery for that delivery month

exceed

(b) the prescribed royalty quantity in respect of the battery for that delivery month.

(2) If there is an overdelivery of crude oil from a battery in any delivery month, the Commission must, by itself or through its agent, act on behalf of the owner of the excess quantity of crude oil for the sale and delivery of that excess quantity to a purchaser.

(3) Where an excess quantity of crude oil is sold or delivered pursuant to subsection (2),

(a) the Commission or the Commission's agent, as the case may be, must negotiate the sale of the excess quantity of crude oil on the same terms and conditions that apply to the sale of the royalty oil unless the Commission or its agent is unable to do so because of market factors, and

(b) subject to subsection (5), the Commission must pay to the operator concerned, in respect of each cubic metre of the excess quantity of crude oil, an amount equal to the sale proceeds received by the Commission for the excess quantity less the amount per cubic metre prescribed by the Commission as a fee for its services in carrying out the sale and delivery of the excess quantity.

(4) If a payment of an amount is made under subsection (3)(b) to the operator of the battery,

(a) the operator is responsible for paying that amount to the former owner or owners of the excess quantity to the extent that the operator was not its owner, and

(b) the payment to the operator operates to discharge the Commission of any liability to pay that amount to the former owner or owners of the excess quantity.

(5) The Commission is not liable

(a) to any person for the payment of interest in relation to any amount received by the Commission under this section, or

(b) to pay any amount to the battery operator or any owner or former owner of the excess quantity in respect of any portion of the excess quantity lost or destroyed before delivery to the purchaser of the excess quantity.

Part 3
Penalties Related To Inaccurate Forecasting

Interpretation

16(1) In this Part,

(a) "avoidance charge" means a cost or charge reasonably incurred by a shipper for the purpose of avoiding the imposition of a non-performance penalty, or reducing the amount of a non-performance penalty, that would otherwise be imposed on the shipper;

(b) "cleaning plant" means a crude oil cleaning plant that

(i) is connected to a gathering pipeline but is not operated by the owner of that pipeline, or

(ii) is not connected to a gathering pipeline;

(c) "connected battery" means a battery that is connected directly to a gathering pipeline or feeder pipeline;

(d) "document" means a document or other memorandum of information whether in writing or in electronic form or represented or reproduced by any other means;

(e) "feeder pipeline" means a crude oil pipeline in Alberta that is connected to and transports crude oil to a trunk line;

(f) "flow-through penalty" means a penalty imposed by the Commission pursuant to section 18(1);

(g) "Form A forecast" means a document, commonly referred to in the oil industry as a Form A forecast, provided prior to a delivery month in accordance with normal oil industry practice by the operator of a connected battery, truck terminal, cleaning plant or gathering pipeline to the operator of a feeder pipeline and showing

(i) a forecast of the volume of crude oil to be delivered by the operator of that unconnected battery, truck terminal, cleaning plant or gathering pipeline in the delivery month,

(ii) the shippers for whose account the crude oil is to be delivered by those operators in the delivery month, and

(iii) the portions of that volume allocated to the accounts of those shippers;

(h) "Form C forecast" means a document, commonly referred to in the oil industry as a Form C forecast, provided prior to a delivery month in accordance with normal oil industry practice by the operator of a feeder pipeline to

(i) each operator of a connected battery, truck terminal, cleaning plant or gathering pipeline that is expected to deliver crude oil to the feeder pipeline in that delivery month, and

(ii) each shipper for whose account crude oil is to be delivered to the feeder pipeline in that delivery month,

and showing a forecast of the volume of crude oil that will be tendered for delivery to that feeder pipeline in that delivery month, the shippers for whose account the crude oil is to be delivered by those operators and the portions of those volumes allocated to the accounts of those shippers;

(i) "gathering pipeline" means a crude oil pipeline in Alberta that is connected to one or more batteries, truck terminals or cleaning plants and transports crude oil to a feeder pipeline;

(j) "non-performance penalty", in relation to a delivery month, means a penalty imposed on a shipper by the operator of a crude oil pipeline pursuant to its tariff by reason of a failure by the shipper to tender for delivery to the pipeline in that delivery month

(i) the volume of crude oil that the shipper notified the pipeline operator would be tendered for delivery to the pipeline by that shipper in that delivery month, or

(ii) the percentage specified in the tariff of that volume of crude oil;

(k) "notice of shipment" means

(i) a document, commonly referred to in the oil industry as a notice of shipment, given by a shipper to the operator of a crude oil pipeline prior to a delivery month in accordance with normal oil industry practice and showing, among other things, the volume of crude oil to be tendered for delivery by the shipper to that pipeline during the delivery month,

(ii) if the shipper prepares a corrected notice of shipment after being notified of discrepancies in the initial notice referred to in subclause (i), the corrected notice of shipment, or

(iii) if the pipeline operator informs the shipper of an apportionment among shippers of the total volume of crude oil that may be tendered for delivery to the pipeline in that delivery month, the revised notice of shipment given by the shipper to the operator reflecting the reduction of the volume of crude oil to be tendered for delivery by that shipper in that delivery month resulting from the apportionment;

(l) "oilfield facility" means a battery, a truck terminal, a cleaning plant or a gathering pipeline;

(m) "transfer forecast" means a forecast that

(i) is part of a series of transfer forecasts forming part of the reporting and forecasting system administered by the oil industry,

(ii) is prepared by an oilfield facility operator in accordance with normal oil industry practice, and

(iii) shows, among other things, the volumes of crude oil intended to be delivered by that oilfield facility

operator to another oilfield facility operator in a delivery month;

(n) "truck terminal" means a crude oil tank terminal connected to a gathering pipeline or feeder pipeline not operated by the operator of that pipeline and to which crude oil is transported by truck;

(o) "trunk line" means an extra-provincial crude oil pipeline;

(p) "unconnected battery" means a battery that is not directly connected to a gathering pipeline or feeder pipeline.

(2) If the Commission's agent, in its capacity as a shipper, is liable to the operator of a crude oil pipeline for a non-performance penalty in respect of a delivery month and the agent is entitled under the agency contract to recover all or part of the amount of the penalty from the Crown and the Commission, the amount so recoverable shall, for the purposes of this Part, be deemed to be a non-performance penalty imposed on the Commission by the operator of the pipeline.

(3) If the Commission's agent, in its capacity as a shipper, incurs an avoidance charge in respect of a delivery month and the agent is entitled under the agency contract to recover all or part of the avoidance charge from the Crown and the Commission, the amount so recoverable shall, for the purposes of this Part, be deemed to be an avoidance charge incurred by the Commission.

(4) The Commission may determine what constitutes normal oil industry practice for the purposes of this Regulation and in doing so shall have regard to the system of forecasting and reporting administered by the oil industry.

Notice to furnish information

17(1) Subject to this section, the Commission may give a notice to a person who is or was the operator of an oilfield facility or feeder pipeline for a delivery month to furnish to the Commission, by the deadline specified in the notice,

(a) a copy of a transfer forecast or a Form A forecast prepared by or on behalf of that operator in respect of that delivery month, or

(b) information relating to the preparation of the transfer forecast or the Form A forecast.

(2) The Commission may give a notice under this section only for the purpose of obtaining information for the purpose of determining

(a) the liability of an oilfield facility operator for a flow-through penalty in respect of the delivery month concerned, and

(b) the amount of the penalty.

(3) A person who is required to comply with a notice given under this section is liable to pay to the Commission

(a) a penalty of $100, if the copy of the forecast or the information referred to in the notice is not furnished to the Commission by the deadline specified in the notice, and

(b) if the failure to comply with the notice continues for one or more months following the deadline specified in the notice, a further penalty of $100 for each time any of those months expires without the notice having been complied with.

(4) If a notice given under this section is only partially complied with by reason of the omission of any copy of a forecast or of any information required to be furnished then, for the purposes of subsection (3), the notice shall be deemed not to have been complied with until the omitted copy or information is furnished to the Commission.

Flow-through penalties

18(1) The Commission may, subject to this Part, impose a penalty on one or more oilfield facility operators in respect of a delivery month in any or all of the following circumstances:

(a) if the Commission, in its capacity as a shipper of crude oil, is liable to the operator of a crude oil pipeline for a non-performance penalty in respect of that delivery month;

(b) if a non-performance penalty is deemed to be imposed on the Commission in respect of a delivery month by reason of section 16(2);

(c) if the Commission, in its capacity as a shipper, incurs an avoidance charge in respect of that delivery month;

(d) if the Commission is deemed to have incurred an avoidance charge in respect of that delivery month by reason of section 16(3).

(2) The Commission may impose flow-through penalties in respect of a delivery month only if it determines

(a) that the non-performance penalty imposed or deemed to be imposed on the Commission in respect of that month, or the avoidance charge incurred or deemed to be incurred by the Commission in respect of that month, was attributable to the fact that the notice of shipment for the month given by the Commission or its agent to the operator of the pipeline showed volumes of crude oil to be tendered for delivery that were greater than the actual volumes delivered, as shown in the Commission's or the agent's final shipper's balance for the month,

(b) that the crude oil volumes shown in the Commission's or the agent's notice of shipment as the volumes to be tendered for delivery in the month were based on crude oil volumes in Form C forecasts provided to the Commission or its agent by one or more operators of feeder pipelines that transported the crude oil, and that the volumes of crude oil actually delivered in the month were less than the volumes shown in the Form C forecasts, and

(c) that the reason for the overforecasting of crude oil deliveries in the Form C forecasts was attributable to inaccurate forecasting of deliveries in one or more of the Form A forecasts on which the Form C forecasts were wholly or partly based or in one or more transfer forecasts on which one or more Form A forecasts were wholly or partly based.

(3) The Commission may determine which oilfield facility operators are liable for flow-through penalties on the basis of

(a) the Form A forecasts and transfer forecasts provided by those battery operators who delivered, or were required to but did not deliver, royalty oil to the Commission in the delivery month concerned,

(b) one or more transfer forecasts that led to an inaccurate Form C forecast on which the Commission or its agent relied in preparing the Commission's or the agent's notice of shipment for a delivery month, where each of those transfer forecasts either

(i) contained an excessive forecast of the volume of royalty oil to be delivered by the oilfield facility operator who prepared the transfer forecast, or

(ii) changed the forecast of deliveries of royalty oil in another transfer forecast that preceded it in the series of transfer forecasts for that delivery month and that caused the other transfer forecast to become

excessive or more excessive in relation to royalty oil deliveries,

and

(c) any other information obtained by the Commission pursuant to section 17 or otherwise in the possession of the Commission and containing evidence of excessive forecasting of royalty oil deliveries.

(4) The Commission may determine the amounts of the respective flow-through penalties imposed on oilfield facility operators determined to be liable for those penalties under subsection (3), subject to the following:

(a) a penalty imposed on an operator in respect of a delivery month is subject to a minimum of $250;

(b) the aggregate amount of the flow-through penalties imposed on all oilfield facility operators in Alberta for a delivery month must not exceed the aggregate of

(i) the non-performance penalties imposed or deemed to be imposed on the Commission in respect of that delivery month,

(ii) the avoidance charge incurred or deemed to have been incurred by the Commission in respect of that delivery month, and

(iii) an amount determined by the Commission as its administration costs incurred in connection with the imposition of the flow-through penalties for that delivery month,

unless that aggregate amount is exceeded by reason of the imposition of minimum penalties under clause (a).

Waiver of penalty

19 The Commission may, on application by the oilfield facility operator concerned, waive all or part of a penalty imposed on that operator under this Part if the Commission considers the waiver warranted in the circumstances.

Invoicing for penalties

20 Where a penalty is imposed on an oilfield facility operator pursuant to this Part, the Commission must

(a) send to the oilfield facility operator an invoice for the penalty and inform the operator of the reason for its imposition and the deadline by which payment of the penalty must be received by the Commission, or

(b) in the case of a penalty imposed on a battery operator, include the penalty in a monthly statement sent to the battery operator and showing the reason for the penalty.

Appeals respecting penalties

21(1) Subject to this section, a person on whom a penalty is imposed under this Part may file with the Commission a notice of an appeal to the Minister in respect of

(a) that person's liability for the penalty,

(b) the amount of the penalty, or

(c) the Commission's refusal to waive the penalty pursuant to section 19.

(2) A notice of appeal must be filed with the Commission within

(a) 2 months after the date of the invoice for the penalty or the monthly statement that includes the penalty, as the case may be, or

(b) one month after the date of the Commission's notice to the battery operator of its refusal to waive the penalty, in the case of an appeal under subsection (1)(c).

(3) On receiving a notice of appeal, the Minister shall conduct a review of the penalty and the representations in or accompanying the notice.

(4) On concluding the review, the Minister must either

(a) confirm the penalty,

(b) revoke the penalty on the ground that the appellant was not liable for it,

(c) reduce the amount of the penalty, or

(d) grant any penalty waiver pursuant to section 19 that the Commission could have granted, in the case of an appeal under subsection (1)(c),

and must inform the appellant of the Minister's decision.

(5) The Commission may establish general directions respecting the filing of and content of notices of appeal under this section and the procedures for the conduct of those appeals.

Part 4
General

Truck transportation allowances

22(1) Subject to this section, the Crown is liable to a battery operator for an allowance based on an average of the costs incurred in the transportation of royalty oil by truck during a delivery month from that operator's battery to an unloading facility connected to a pipeline.

(2) The Crown is liable for an allowance under this section only to the extent that the Minister consents to be liable for the allowance.

(3) The payment of an allowance under this section is subject to any conditions the Minister prescribes, in addition to the following conditions:

(a) the royalty oil must have been transported in an uninterrupted manner;

(b) the royalty oil must have been delivered to the unloading facility to which it was required to be delivered during the delivery month concerned pursuant to section 11(1)(b) or (2), whichever applied;

(c) the royalty oil must have been delivered to the unloading facility for the Crown's account;

(d) the royalty oil, while being transported, met the quality specifications for the pipeline to which the royalty oil was delivered from the unloading facility.

(4) If a condition referred to in subsection (3) was breached in respect of an allowance paid under this section, the Minister may recover the allowance by action or by way of set-off under section 23.

(5) An allowance for which the Crown is liable under this section shall be paid to the operator of the battery for the delivery month in which the royalty oil was transported by truck.

(6) The Minister may not consent to the payment of an allowance under this section unless a claim is made by the operator of the battery for the delivery month concerned by the end of the 2nd year following the year in which the delivery month occurred.

Province of Alberta

MINES AND MINERALS ACT

OIL SANDS ROYALTY REGULATION, 2009

Alberta Regulation 223/2008

With amendments up to and including Alberta Regulation 231/2021

Current as of December 1, 2021

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ALBERTA REGULATION 223/2008

Mines and Minerals Act

OIL SANDS ROYALTY REGULATION, 2009

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Part 1
General

Interpretation

1(1) In this Regulation,

(a) "Act" means the *Mines and Minerals Act*;

(b) "allowed cost" means costs or other amounts that are allowed costs under the *Oil Sands Allowed Costs (Ministerial) Regulation* (AR 231/2008);

(c) "blended bitumen" means cleaned crude bitumen blended or deemed to have been blended with diluent;

(d) repealed AR 89/2013 s38;

(e) "cogeneration plant" means a plant that is approved under the *Hydro and Electric Energy Act* and produces electricity concurrently with thermal energy;

(f) "core or supporting asset" means, in relation to a Project,

(i) a capital asset or engineering system without which oil sands or oil sands products to be recovered or obtained pursuant to the Project could not physically be so recovered or obtained, or

(ii) a capital asset or engineering system necessary for the operation and maintenance of a capital asset or engineering system described in subclause (i),

but does not include an overhead asset;

(g) "cost of diluent" means the cost of diluent determined under section 22(3);

(h) "crude bitumen" means, despite section 1(1)(d) of the Act, a viscous mixture, mainly of hydrocarbons, that may contain sulphur compounds, that is obtained from oil

sands and that may or may not flow to a well, and includes cleaned crude bitumen;

(h.1) "cumulative cost" means, in relation to a Project, the cumulative cost of the Project determined under section 11(5.3) or 25(2);

(h.2) "cumulative revenue" means, in relation to a Project, the cumulative revenue of the Project determined under section 11(5.3) or 25(3);

(i) "description of the Project" means,

(i) in relation to a Project other than a Prior Project, the description specified for the Project pursuant to sections 11(4)(b) and 14, and

(ii) in relation to a Prior Project, the description specified for the Prior Project pursuant to sections 16(2)(a)(i) and 17(1)(d) of the Prior Regulation or pursuant to a contract under section 9(a) of the Act relating to the Prior Project,

as that description may be amended from time to time;

(j) "development area" means

(i) in relation to a Project other than a Prior Project, the area and strata described pursuant to section 14(1)(d), and

(ii) in relation to a Prior Project, the area and strata described pursuant to section 17(1)(d)(i) of the Prior Regulation,

from which oil sands or oil sands products are to be recovered pursuant to the Project, as that area and strata may be amended from time to time;

(k) "diluent" means hydrocarbon substances used to dilute crude bitumen;

(l) "diluent recovery unit" means a processing plant or part of a processing plant at which diluent is separated from blended bitumen;

(m) "effective date" means,

(i) in respect of a Prior Project, the effective date referred to in section 1(1)(i) of the Prior Regulation or deemed by a contract under section 9(a) of the Act to have been specified for the Prior Project,

Crown's royalty share of the oil sands product or crude bitumen is to be calculated, or

(ii) in relation to an oil sands product, or blended bitumen containing crude bitumen, obtained pursuant to a Project that is not a Project substance, the place specified in section 30(3) as the royalty calculation point for the oil sands product or the blended bitumen, as the case may be;

(qq) "royalty compensation" means money payable to the Crown under this Regulation as compensation in respect of the Crown's royalty share of oil sands or oil sands products, the Crown's title to which is transferred pursuant to sections 26, 27 or 31;

(rr) "solution gas" means gas dissolved in crude bitumen under initial reservoir conditions and includes any of that gas that evolves as a result of changes in pressure due to human disturbance, but does not include gas produced through chemical alteration of crude bitumen using high temperature, high pressure, a catalyst or otherwise;

(ss) "synthetic crude oil" means a mixture, mainly of pentanes and heavier hydrocarbons, that may contain sulphur compounds, that is obtained from upgrading crude bitumen and that is liquid at a temperature of 15 degrees Celsius and at a pressure of 101.325 kilopascals;

(ss.1) "third party disposition" means the first disposition of an oil sands product obtained pursuant to a Project and delivered at a royalty calculation point for the product, made

(i) in an arm's length transaction, whether or not the transaction is preceded by one or more non-arm's length transactions in which the oil sands product is disposed of, and

(ii) before the oil sands product is processed in order to produce other oil sands products or is otherwise consumed or used;

(tt) "unit price" means, in relation to each oil sands product obtained pursuant to a Project and delivered at a royalty calculation point of the Project for that kind of product during a month or Period, including blended bitumen containing crude bitumen so obtained or recovered and delivered, the price determined under section 32 in respect of that product for that month or Period, as the case may be;

(3) The Crown's title to the Crown's royalty share of any oil sands recovered by a non-Project mining operation pursuant to an agreement and delivered in a month at the boundary of the location of the agreement is automatically transferred to the lessee of the agreement immediately downstream from the place at the boundary where the oil sands is so delivered.

(4) When the Crown's title to the Crown's royalty share of oil sands delivered in a month at the boundary of the location of the agreement pursuant to which the oil sands was recovered is transferred pursuant to subsection (3), the lessee to whom the title is transferred shall, not later than the last day of the following month, pay to the Crown, in respect of that royalty share, an amount equal to the product of the quantity of the royalty share measured in tonnes multiplied by the par price for oil sands prescribed for the month pursuant to section 8(a).

Non-Project well events

27(1) Subject to subsection (1.3), the royalty reserved to the Crown on an oil sands product recovered from a non-Project well event pursuant to an agreement granting oil sands rights and delivered in a month from the well containing the well event is the royalty that would be reserved to the Crown under the *Petroleum Royalty Regulation, 2009* (AR 222/2008) or the *Petroleum Royalty Regulation, 2017* (AR 212/2016), as the case may be, as if the oil sands product were crude oil.

(1.1) In respect of a well that is removed from the description of a Project or Prior Project pursuant to section 12 or 17

(a) if its first well event was spud prior to January 1, 2017, the royalty reserved to the Crown on oil sands products recovered from the well shall be calculated

(i) pursuant to the *Petroleum Royalty Regulation, 2009* (AR 222/2008) on and after the day it is removed from the description of a Project or Prior Project until December 31, 2026, and

(ii) pursuant to the *Petroleum Royalty Regulation, 2017* (AR 212/2016) after December 31, 2026, as though the well's total revenue from all hydrocarbon products, as determined by the Minister, were equal to C*, as C* is determined under the *Petroleum Royalty Regulation, 2017* (AR 212/2016),

and

(b) if its first well event was spud on or after January 1, 2017, the royalty reserved to the Crown on oil sands products

recovered from the well on and after the date the well no longer forms part of the description of the Project shall be calculated pursuant to the *Petroleum Royalty Regulation, 2017* (AR 212/2016) as though the well's total revenue from all hydrocarbon products, as determined by the Minister, were equal to C*, as C* is determined under the *Petroleum Royalty Regulation, 2017* (AR 212/2016).

(1.2) A well referred to in subsection (1.1)

(a) is deemed for the purposes of section 10(4.3) never to have received a C* before it was removed from the description of a Project or Prior Project, and

(b) is not eligible to receive a C* after it is removed from the description of a Project or Prior Project.

(1.3) If a well included in an application referred to in section 10(4.3) is approved by the Minister as forming part of the description of a Project,

(a) the royalty to the Crown on oil sands products recovered from that well shall be recalculated by the Minister commencing the first day of the month in which the royalty share for that well is determined pursuant to the *Petroleum Royalty Regulation, 2017* (AR 212/2016) until the effective date of the Project, as though the well's total revenue from all hydrocarbon products, as determined by the Minister, were equal to C*, as C* is determined under the *Petroleum Royalty Regulation, 2017* (AR 212/2016), and

(b) the well is deemed never to have received a C* prior to being approved by the Minister as forming part of the description of the Project.

(2) Royalty on an oil sands product under subsection (1), (1.1) or (1.3) shall be free and clear of all deductions.

(3) The Crown's title to the Crown's royalty share of any oil sands product recovered from a non-Project well event is automatically transferred to the lessee of the well event at the point immediately downstream from the well containing the well event.

(4) When the Crown's title to the Crown's royalty share of an oil sands product delivered in a month from a well is transferred pursuant to subsection (3), the lessee to whom the title is transferred shall, not later than the last day of the following month, pay to the Crown, in respect of that royalty share, an amount equal to the product of the quantity of the royalty share multiplied by the

greater of zero and the unit value determined under subsection (5) for that kind of oil sands product for that month.

(5) The unit value applicable to the Crown's royalty share for a month of each kind of oil sands product recovered from a non-Project well event is the value determined by the Minister as of the time the Crown's royalty share is transferred pursuant to subsection (3) taking into consideration, without limitation, dispositions during that month of that kind of oil sands product recovered from the well event, notwithstanding the consideration actually given for the Crown's royalty share when it was sold or otherwise disposed of.

(6) The Minister may require the licensee, as defined in the *Petroleum Royalty Regulation, 2017* (AR 212/2016), or the operator of a non-Project well to provide to the Minister all or a portion of the information required to be provided to the Minister under the *Petroleum Royalty Regulation, 2017* (AR 212/2016) as if that Regulation applied, and all or a portion of the information required to be provided to the Minister under the *Enhanced Hydrocarbon Recovery Royalty Regulation* (AR 210/2016) or under the *Emerging Resources Royalty Regulation* (AR 209/2016) to the extent those regulations apply, to the non-Project well, and if the licensee or the operator does not provide the information to the Minister, or fails to provide the information in the time specified in the applicable regulation, the Minister may impose a penalty in accordance with section 44(2.1).

AR 223/2008 s27;11/2012;26/2017

Trucking costs and allowances

28(1) The costs and allowances to which the Minister consents for a month in respect of the costs that are paid by the lessee of a non-Project well event during the month in trucking the Crown's royalty share of crude bitumen recovered from the well event

(a) from the last facility at which impurities are removed from the crude bitumen before the crude bitumen is delivered into a pipeline, and

(b) to an unloading facility connected to a pipeline,

shall, subject to subsections (2), (3), (4) and (6), and despite the transfer of the royalty share pursuant to section 27(3), be deducted from the royalty compensation payable by the lessee in respect of crude bitumen recovered from non-Project well events during that month.

(2) The Minister may determine the amount of the costs and allowances referred to in subsection (1).

(3) Subject to subsections (4) and (6), the Minister may, for the purposes of this section,

(a) estimate the amount of the costs and allowances for a lessee for a month and, subject to clause (b)(ii), consent to that estimated amount, and

(b) after the 3rd month following the month referred to in clause (a), determine the actual costs and allowances for the lessee for the month, and

(i) if the actual costs and allowances exceed the estimated amount referred to in clause (a), consent to further costs and allowances equal to the difference, or

(ii) if the estimated amount referred to in clause (a) exceeds the actual costs and allowances, invoice the lessee for the difference, or deduct the difference from costs and allowances consented to for the next month or months, as the case may be.

(4) The costs and allowances consented to under this section in respect of a lessee for a month may not exceed the aggregate of the royalty compensation payable by the lessee for the month under section 27.

(5) The lessee to whom an invoice is issued under subsection (3) shall pay the Crown the amount invoiced on or before the last day of the month following the month in which the invoice is issued.

(6) It is a condition of any consent given under subsection (1) or (3) that

(a) the trucking of the Crown's royalty share from the place described in subsection (1)(a) to the place described in subsection (1)(b) occurred in an uninterrupted manner, and

(b) the Crown's royalty share, while being trucked, met the quality specifications in respect of the pipeline referred to in subsection (1)(b).

AR 223/2008 s28;26/2017

Division 2
Projects

Royalty share from Projects

29(1) The royalty reserved to the Crown, under each agreement granting oil sands rights in the development area of a Project, on

each oil sands product recovered from the development area and delivered at a royalty calculation point for the product during each month of a pre-payout Period is the percentage, calculated in accordance with the following formula, of the quantity of the oil sands product so recovered and delivered:

$$R_G\% = 1\% + [F_G (A - B)]$$

where

$R_G\%$ is the Crown's royalty share of the quantity expressed as a percentage;

F_G is 8% divided by $65 per barrel;

A is the lesser of the WTI price for the given month calculated in accordance with subsection (3) and $120 per barrel;

B is the lesser of A for the month and $55 per barrel.

(2) The royalty reserved to the Crown, under each agreement granting oil sands rights in the development area of a Project, on each oil sands product recovered from the development area and delivered at a royalty calculation point for the product during a post-payout Period is the greater of

(a) the percentage of the quantity of the oil sands product so recovered and delivered during the Period calculated in accordance with the following formula:

$$R_G\% = 1\% + [F_G (A - B)]$$

where

$R_G\%$ is the Crown's royalty share of the quantity expressed as a percentage;

F_G is 8% divided by $65 per barrel;

A is the lesser of the WTI price for the year containing the Period calculated in accordance with subsection (3.1) and $120 per barrel;

B is the lesser of A for that year and $55 per barrel;

and

(b) the percentage of the quantity of the oil sands product so recovered and delivered during the Period calculated in accordance with the following formula:

$$R_N\% = NRPF \frac{[NR]}{GR}$$

where

$R_N\%$ is the Crown's royalty share of the quantity expressed as a percentage;

NRPF is the net royalty percentage factor calculated as $25\% + (F_N (A - B))$;

NR is the net revenue of the Project for the Period;

GR is the gross revenue of the Project for the Period;

F_N is 15% divided by $65 per barrel;

A is the lesser of the WTI price for the year containing the Period and $120 per barrel;

B is the lesser of A for that year and $55 per barrel.

(3) For the purposes of subsection (1), the WTI price for a given month, expressed in Canadian currency, is the product of

(a) the simple average of the WTI prices for the trading days of the preceding month expressed in American currency, and

(b) the simple average of the daily actual USD/CAD (noon) exchange rates for that month.

(3.1) For the purposes of subsection (2), the WTI price for a year, expressed in Canadian currency, is the product of

(a) the simple average of the monthly WTI prices for the months of that year, calculated in accordance with subsection (3)(a), expressed in American currency, and

(b) the simple average of the monthly exchange rates calculated in accordance with subsection (3)(b), for the months in that year.

(3.2) For the purposes of subsections (1) and (2), $R_G\%$, $R_N\%$ and NRPF shall be expressed to the nearest 5th decimal place.

(4) For the purposes of subsection (3),

(a) the WTI price for a trading day is the settlement price for the day of the prompt month contract of West Texas Intermediate crude futures as traded on NYMEX,

(b) a trading day is a day during which a prompt month contract referred to in clause (a) is traded on NYMEX, and

(c) the actual USD/CAD (noon) exchange rate for a day is that published in relation to that day by the Bank of Canada.

(5) If crude bitumen or cleaned crude bitumen recovered pursuant to a Project from the development area of the Project

(a) is delivered to a royalty calculation point for the crude bitumen or cleaned crude bitumen, and

(b) when so delivered is contained in a blend with diluent,

the royalty reserved under subsections (1) and (2) shall be calculated on the quantity determined by deducting from the quantity of blended bitumen the quantity of diluent contained in the blended bitumen.

(6) Royalty on oil sands and oil sands products under this section shall be free and clear of all deductions.

(7) If the Bank of Canada no longer publishes a USD/CAD (noon) exchange rate, the Minister may, by order, specify an exchange rate published by the Bank of Canada to be used for the purposes of subsections (3) and (4) instead of the daily actual USD/CAD (noon) exchange rate.

AR 223/2008 s29;335/2009;11/2012; 26/2017

Royalty calculation point

30(1) If an oil sands product recovered pursuant to a Project from the development area of the Project, other than an oil sands product as described in subsections (2) and (2.1),

(a) is disposed of, or

(b) is permanently removed from Project facilities,

royalty shall be calculated on the quantity of the oil sands product at the place the product is permanently removed from Project facilities.

(2) If

(a) an oil sands product recovered from the development area of a Project, without first being disposed of, is processed in a processing plant that is not included in the description of the Project to obtain cleaned crude bitumen described in section 1(2)(a), and

(b) the cleaned crude bitumen

(i) is disposed of, or

(ii) remains permanently removed from Project facilities,

royalty shall be calculated on the quantity of the cleaned crude bitumen at the place the cleaned crude bitumen is delivered from the processing plant from which it is obtained.

(2.1) If

(a) an oil sands product recovered from the development area of a Project, without first being disposed of, is processed in a processing plant that is not included in the description of the Project to obtain cleaned crude bitumen described in section 1(2)(a),

(b) the cleaned crude bitumen is then blended in a blending facility that, in the Minister's opinion, is immediately adjacent to the processing plant described in clause (a), to obtain blended bitumen, and

(c) the blended bitumen

(i) is disposed of, or

(ii) remains permanently removed from Project facilities,

royalty shall be calculated on the quantity of the cleaned crude bitumen contained in the blended bitumen at the place the blended bitumen is delivered from the blending facility from which it is obtained.

(3) For the purposes of sections 23(2)(e) and 32, the royalty calculation point of a Project for blended bitumen that contains crude bitumen or an oil sands product described in section 23(2)(e)(i)(A) or (B), respectively, is the place that would be the royalty calculation point under subsection (1), (2) or (2.1) for the crude bitumen contained in the blended bitumen or the oil sands product, respectively, if the crude bitumen or oil sands product were a Project substance.

AR 223/2008 s30;11/2012;26/2017

Transfer of Crown's royalty share

31(1) The Crown's title to the Crown's royalty share of any oil sands product recovered from the development area of a Project is automatically transferred at the point immediately downstream from the royalty calculation point for the product to the person who is, in relation to that royalty share, the owner of the lessee's share of the oil sands product.

(2) When the Crown's title to the Crown's royalty share of an oil sands product is transferred pursuant to subsection (1), compensation is payable to the Crown in accordance with this Regulation in respect of that royalty share.

Unit price

32(1) In this section,

(a) "handling charges" means the handling charges, export charges, pipeline tariff charges and charges of a similar nature that are paid to transport third party disposition quantities of a kind of oil sands product obtained pursuant to a Project that are disposed of in third party dispositions during a month or Period, as the case may be, from the royalty calculation point for the product to the place where those dispositions occur, but does not include

(i) any charges that are allowed costs of the Project,

(ii) any charges that are taken into consideration in determining a prior net cumulative balance in respect of the Project,

(iii) any marketing costs or charges, brokerage fees or other like charges,

(iv) any cost of diluent referred to in section 22(2) or 33(3)(a)(ii) or that is an allowed cost of the Project, and

(v) any costs or charges arising in relation to a diluent recovery unit;

(b) "NQ" means, in relation to a Project for a month or Period,

(i) in the case of blended bitumen described in subsection (6)(a)(i), the volume of cleaned crude bitumen contained in the volume of blended bitumen determined by deducting from the production quantity of the Project for the month or Period, respectively, of blended bitumen, the third party

CANADA

CONSOLIDATION

CODIFICATION

Companies' Creditors Arrangement Act

Loi sur les arrangements avec les créanciers des compagnies

R.S.C., 1985, c. C-36

L.R.C. (1985), ch. C-36

Current to March 6, 2024

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

This consolidation is current to March 6, 2024. The last amendments came into force on April 27, 2023. Any amendments that were not in force as of March 6, 2024 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 6 mars 2024. Les dernières modifications sont entrées en vigueur le 27 avril 2023. Toutes modifications qui n'étaient pas en vigueur au 6 mars 2024 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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R.S.C., 1985, c. C-36

An Act to facilitate compromises and arrangements between companies and their creditors

Short Title

Short title

1 This Act may be cited as the *Companies' Creditors Arrangement Act*.

R.S., c. C-25, s. 1.

Interpretation

Definitions

2 (1) In this Act,

aircraft objects [Repealed, 2012, c. 31, s. 419]

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a company; (*agent négociateur*)

bond includes a debenture, debenture stock or other evidences of indebtedness; (*obligation*)

cash-flow statement, in respect of a company, means the statement referred to in paragraph 10(2)(a) indicating the company's projected cash flow; (*état de l'évolution de l'encaisse*)

claim means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*; (*réclamation*)

collective agreement, in relation to a debtor company, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the debtor company and a bargaining agent; (*convention collective*)

L.R.C., 1985, ch. C-36

Loi facilitant les transactions et arrangements entre les compagnies et leurs créanciers

Titre abrégé

Titre abrégé

1 *Loi sur les arrangements avec les créanciers des compagnies*.

S.R., ch. C-25, art. 1.

Définitions et application

Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

accord de transfert de titres pour obtention de crédit Accord aux termes duquel une compagnie débitrice transfère la propriété d'un bien en vue de garantir le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible. (*title transfer credit support agreement*)

actionnaire S'agissant d'une compagnie ou d'une fiducie de revenu assujetties à la présente loi, est assimilée à l'actionnaire la personne ayant un intérêt dans cette compagnie ou détenant des parts de cette fiducie. (*shareholder*)

administrateur S'agissant d'une compagnie autre qu'une fiducie de revenu, toute personne exerçant les fonctions d'administrateur, indépendamment de son titre, et, s'agissant d'une fiducie de revenu, toute personne exerçant les fonctions de fiduciaire, indépendamment de son titre. (*director*)

agent négociateur Syndicat ayant conclu une convention collective pour le compte des employés d'une compagnie. (*bargaining agent*)

biens aéronautiques [Abrogée, 2012, ch. 31, art. 419]

Form of applications

10 (1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

(2) An initial application must be accompanied by

(a) a statement indicating, on a weekly basis, the projected cash flow of the debtor company;

(b) a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and

(c) copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

Publication ban

(3) The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.

R.S., 1985, c. C-36, s. 10; 2005, c. 47, s. 127.

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Relief reasonably necessary

11.001 An order made under section 11 at the same time as an order made under subsection 11.02(1) or during the period referred to in an order made under that subsection with respect to an initial application shall be

Forme des demandes

10 (1) Les demandes prévues par la présente loi peuvent être formulées par requête ou par voie d'assignation introductive d'instance ou d'avis de motion conformément à la pratique du tribunal auquel la demande est présentée.

Documents accompagnant la demande initiale

(2) La demande initiale doit être accompagnée :

a) d'un état portant, projections à l'appui, sur l'évolution hebdomadaire de l'encaisse de la compagnie débitrice;

b) d'un rapport contenant les observations réglementaires de la compagnie débitrice relativement à l'établissement de cet état;

c) d'une copie des états financiers, vérifiés ou non, établis au cours de l'année précédant la demande ou, à défaut, d'une copie des états financiers les plus récents.

Interdiction de mettre l'état à la disposition du public

(3) Le tribunal peut, par ordonnance, interdire la communication au public de tout ou partie de l'état de l'évolution de l'encaisse de la compagnie débitrice s'il est convaincu que sa communication causerait un préjudice indu à celle-ci et que sa non-communication ne causerait pas de préjudice indu à ses créanciers. Il peut toutefois préciser dans l'ordonnance que tout ou partie de cet état peut être communiqué, aux conditions qu'il estime indiquées, à la personne qu'il nomme.

L.R. (1985), ch. C-36, art. 10; 2005, ch. 47, art. 127.

Pouvoir général du tribunal

11 Malgré toute disposition de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.

L.R. (1985), ch. C-36, art. 11; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 124; 2005, ch. 47, art. 128.

Redressements normalement nécessaires

11.001 L'ordonnance rendue au titre de l'article 11 en même temps que l'ordonnance rendue au titre du paragraphe 11.02(1) ou pendant la période visée dans l'ordonnance rendue au titre de ce paragraphe relativement à la demande initiale n'est limitée qu'aux redressements normalement nécessaires à la continuation de l'exploitation

limited to relief that is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

2019, c. 29, s. 136.

de la compagnie débitrice dans le cours ordinaire de ses affaires durant cette période.

2019, ch. 29, art. 136.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

(a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(b) requiring the further advance of money or credit.

2005, c. 47, s. 128.

Droits des fournisseurs

11.01 L'ordonnance prévue aux articles 11 ou 11.02 ne peut avoir pour effet :

a) d'empêcher une personne d'exiger que soient effectués sans délai les paiements relatifs à la fourniture de marchandises ou de services, à l'utilisation de biens loués ou faisant l'objet d'une licence ou à la fourniture de toute autre contrepartie de valeur qui ont lieu après l'ordonnance;

b) d'exiger le versement de nouvelles avances de fonds ou de nouveaux crédits.

2005, ch. 47, art. 128.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Suspension : demande initiale

11.02 (1) Dans le cas d'une demande initiale visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période maximale de dix jours qu'il estime nécessaire :

a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*;

b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;

c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

Suspension : demandes autres qu'initiales

(2) Dans le cas d'une demande, autre qu'une demande initiale, visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période qu'il estime nécessaire :

a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime des lois mentionnées à l'alinéa (1)a);

b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;

establishes a *provincial pension plan* as defined in that subsection,

and for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

2005, c. 47, s. 128; 2009, c. 33, s. 28.

province est une province instituant un régime général de pensions au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un régime provincial de pensions au sens de ce paragraphe.

Pour l'application de l'alinéa c), la disposition législative provinciale en question est réputée avoir, à l'encontre de tout créancier et malgré tout texte législatif fédéral ou provincial et toute autre règle de droit, la même portée et le même effet que le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* quant à la somme visée au sous-alinéa c)(i), ou que le paragraphe 23(2) du *Régime de pensions du Canada* quant à la somme visée au sous-alinéa c)(ii), et quant aux intérêts, pénalités et autres charges afférents, quelle que soit la garantie dont bénéficie le créancier.

2005, ch. 47, art. 128; 2009, ch. 33, art. 28.

Meaning of *regulatory body*

11.1 (1) In this section, ***regulatory body*** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Définition de *organisme administratif*

11.1 (1) Au présent article, ***organisme administratif*** s'entend de toute personne ou de tout organisme chargé de l'application d'une loi fédérale ou provinciale; y est assimilé toute personne ou tout organisme désigné à ce titre par règlement.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Organisme administratif — ordonnance rendue en vertu de l'article 11.02

(2) Sous réserve du paragraphe (3), l'ordonnance prévue à l'article 11.02 ne porte aucunement atteinte aux mesures — action, poursuite ou autre procédure — prises à l'égard de la compagnie débitrice par ou devant un organisme administratif, ni aux investigations auxquelles il procède à son sujet. Elles n'ont d'effet que sur l'exécution d'un paiement ordonné par lui ou le tribunal.

Exception

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Exception

(3) Le tribunal peut par ordonnance, sur demande de la compagnie et sur préavis à l'organisme administratif et à toute personne qui sera vraisemblablement touchée par l'ordonnance, déclarer que le paragraphe (2) ne s'applique pas à l'une ou plusieurs des mesures prises par ou devant celui-ci, s'il est convaincu que, à la fois :

a) il ne pourrait être fait de transaction ou d'arrangement viable à l'égard de la compagnie si ce paragraphe s'appliquait;

b) l'ordonnance demandée au titre de l'article 11.02 n'est pas contraire à l'intérêt public.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may,

Déclaration : organisme agissant à titre de créancier

(4) En cas de différend sur la question de savoir si l'organisme administratif cherche à faire valoir ses droits à

on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

1997, c. 12, s. 124; 2001, c. 9, s. 576; 2005, c. 47, s. 128; 2007, c. 29, s. 106, c. 36, s. 65.

titre de créancier dans le cadre de la mesure prise, le tribunal peut déclarer, par ordonnance, sur demande de la compagnie et sur préavis à l'organisme, que celui-ci agit effectivement à ce titre et que la mesure est suspendue.

1997, ch. 12, art. 124; 2001, ch. 9, art. 576; 2005, ch. 47, art. 128; 2007, ch. 29, art. 106, ch. 36, art. 65.

11.11 [Repealed, 2005, c. 47, s. 128]

11.11 [Abrogé, 2005, ch. 47, art. 128]

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Financement temporaire

11.2 (1) Sur demande de la compagnie débitrice, le tribunal peut par ordonnance, sur préavis de la demande aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la compagnie sont grevés d'une charge ou sûreté — d'un montant qu'il estime indiqué — en faveur de la personne nommée dans l'ordonnance qui accepte de prêter à la compagnie la somme qu'il approuve compte tenu de l'état de l'évolution de l'encaisse et des besoins de celle-ci. La charge ou sûreté ne peut garantir qu'une obligation postérieure au prononcé de l'ordonnance.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priorité — créanciers garantis

(2) Le tribunal peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Priorité — autres ordonnances

(3) Il peut également y préciser que la charge ou sûreté n'a priorité sur toute autre charge ou sûreté grevant les biens de la compagnie au titre d'une ordonnance déjà rendue en vertu du paragraphe (1) que sur consentement de la personne en faveur de qui cette ordonnance a été rendue.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

Facteurs à prendre en considération

(4) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

a) la durée prévue des procédures intentées à l'égard de la compagnie sous le régime de la présente loi;

b) la façon dont les affaires financières et autres de la compagnie seront gérées au cours de ces procédures;

c) la question de savoir si ses dirigeants ont la confiance de ses créanciers les plus importants;

d) la question de savoir si le prêt favorisera la conclusion d'une transaction ou d'un arrangement viable à l'égard de la compagnie;

e) la nature et la valeur des biens de la compagnie;

(b) to "trustee" is to be read as a reference to "monitor"; and

(c) to "bankrupt", "insolvent person" or "debtor" is to be read as a reference to "debtor company".

2005, c. 47, s. 131; 2007, c. 36, s. 78.

Her Majesty

Deemed trusts

37 (1) Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

Exceptions

(2) Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a "federal provision"), nor does it apply in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province if

(a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(b) the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a *provincial pension plan* as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

2005, c. 47, s. 131.

Sa Majesté

Fiducies présumées

37 (1) Sous réserve du paragraphe (2) et par dérogation à toute disposition législative fédérale ou provinciale ayant pour effet d'assimiler certains biens à des biens détenus en fiducie pour Sa Majesté, aucun des biens de la compagnie débitrice ne peut être considéré comme tel par le seul effet d'une telle disposition.

Exceptions

(2) Le paragraphe (1) ne s'applique pas à l'égard des sommes réputées détenues en fiducie aux termes des paragraphes 227(4) ou (4.1) de la *Loi de l'impôt sur le revenu*, des paragraphes 23(3) ou (4) du *Régime de pensions du Canada* ou des paragraphes 86(2) ou (2.1) de la *Loi sur l'assurance-emploi* (chacun étant appelé « disposition fédérale » au présent paragraphe) ou à l'égard des sommes réputées détenues en fiducie aux termes de toute loi d'une province créant une fiducie présumée dans le seul but d'assurer à Sa Majesté du chef de cette province la remise de sommes déduites ou retenues aux termes d'une loi de cette province, si, dans ce dernier cas, se réalise l'une des conditions suivantes :

a) la loi de cette province prévoit un impôt semblable, de par sa nature, à celui prévu par la *Loi de l'impôt sur le revenu*, et les sommes déduites ou retenues au titre de cette loi provinciale sont de même nature que celles visées aux paragraphes 227(4) ou (4.1) de la *Loi de l'impôt sur le revenu*;

b) cette province est une province instituant un régime général de pensions au sens du paragraphe 3(1) du *Régime de pensions du Canada*, la loi de cette province institue un régime provincial de pensions au sens de ce paragraphe, et les sommes déduites ou retenues au titre de cette loi provinciale sont de même nature que celles visées aux paragraphes 23(3) ou (4) du *Régime de pensions du Canada*.

Pour l'application du présent paragraphe, toute disposition de la loi provinciale qui crée une fiducie présumée est réputée avoir, à l'encontre de tout créancier de la compagnie et malgré tout texte législatif fédéral ou provincial et toute règle de droit, la même portée et le même

CANADA

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CODIFICATION

Bankruptcy and Insolvency Act

Loi sur la faillite et l'insolvabilité

R.S.C., 1985, c. B-3

L.R.C. (1985), ch. B-3

Current to February 20, 2024

Last amended on April 27, 2023

À jour au 20 février 2024

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1er juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité — lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

NOTE

This consolidation is current to February 20, 2024. The last amendments came into force on April 27, 2023. Any amendments that were not in force as of February 20, 2024 are set out at the end of this document under the heading "Amendments Not in Force".

NOTE

Cette codification est à jour au 20 février 2024. Les dernières modifications sont entrées en vigueur le 27 avril 2023. Toutes modifications qui n'étaient pas en vigueur au 20 février 2024 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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R.S.C., 1985, c. B-3

An Act respecting bankruptcy and insolvency

Short Title

Short title

1 This Act may be cited as the *Bankruptcy and Insolvency Act*.

R.S., 1985, c. B-3, s. 1; 1992, c. 27, s. 2.

Interpretation

Definitions

2 In this Act,

affidavit includes statutory declaration and solemn affirmation; (*affidavit*)

aircraft objects [Repealed, 2012, c. 31, s. 414]

application, with respect to a bankruptcy application filed in a court in the Province of Quebec, means a motion; (*Version anglaise seulement*)

assignment means an assignment filed with the official receiver; (*cession*)

bank means

(a) every bank and every authorized foreign bank within the meaning of section 2 of the *Bank Act*,

(b) every other member of the Canadian Payments Association established by the *Canadian Payments Act*, and

(c) every local cooperative credit society, as defined in subsection 2(1) of the Act referred to in paragraph (b), that is a member of a central cooperative credit society, as defined in that subsection, that is a member of that Association; (*banque*)

L.R.C., 1985, ch. B-3

Loi concernant la faillite et l'insolvabilité

Titre abrégé

Titre abrégé

1 *Loi sur la faillite et l'insolvabilité*.

L.R. (1985), ch. B-3, art. 1; 1992, ch. 27, art. 2.

Définitions et interprétation

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

accord de transfert de titres pour obtention de crédit Accord aux termes duquel une personne insolvable ou un failli transfère la propriété d'un bien en vue de garantir le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible. (*title transfer credit support agreement*)

actif à court terme Sommes en espèces, équivalents de trésorerie — notamment les effets négociables et dépôts à vue —, inventaire, comptes à recevoir ou produit de toute opération relative à ces actifs. (*current assets*)

actionnaire S'agissant d'une personne morale ou d'une fiducie de revenu assujetties à la présente loi, est assimilée à l'actionnaire la personne ayant un intérêt dans cette personne morale ou détenant des parts de cette fiducie. (*shareholder*)

administrateur S'agissant d'une personne morale autre qu'une fiducie de revenu, toute personne exerçant les fonctions d'administrateur, indépendamment de son titre, et, s'agissant d'une fiducie de revenu, toute personne exerçant les fonctions de fiduciaire, indépendamment de son titre. (*director*)

bankrupt means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person; (*failli*)

bankruptcy means the state of being bankrupt or the fact of becoming bankrupt; (*faillite*)

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a person; (*agent négociateur*)

child [Repealed, 2000, c. 12, s. 8]

claim provable in bankruptcy, ***provable claim*** or ***claim provable*** includes any claim or liability provable in proceedings under this Act by a creditor; (*réclamation prouvable en matière de faillite* ou *réclamation prouvable*)

collective agreement, in relation to an insolvent person, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the insolvent person and a bargaining agent; (*convention collective*)

common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year; (*conjoint de fait*)

common-law partnership means the relationship between two persons who are common-law partners of each other; (*union de fait*)

corporation means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, insurance companies, trust companies or loan companies; (*personne morale*)

court, except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3, means a court referred to in subsection 183(1) or (1.1) or a judge of that court, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act; (*tribunal*)

creditor means a person having a claim provable as a claim under this Act; (*créancier*)

affidavit Sont assimilées à un affidavit une déclaration et une affirmation solennelles. (*affidavit*)

agent négociateur Syndicat ayant conclu une convention collective pour le compte des employés d'une personne. (*bargaining agent*)

banque

a) Les banques et les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*;

b) les membres de l'Association canadienne des paiements créée par la *Loi canadienne sur les paiements*;

c) les sociétés coopératives de crédit locales définies au paragraphe 2(1) de la loi mentionnée à l'alinéa b) et affiliées à une centrale — au sens du même paragraphe — qui est elle-même membre de cette association. (*bank*)

bien Bien de toute nature, qu'il soit situé au Canada ou ailleurs. Sont compris parmi les biens les biens personnels et réels, en droit ou en equity, les sommes d'argent, marchandises, choses non possessoires et terres, ainsi que les obligations, servitudes et toute espèce de domaines, d'intérêts ou de profits, présents ou futurs, acquis ou éventuels, sur des biens, ou en provenant ou s'y rattachant. (*property*)

biens [Abrogée, 2004, ch. 25, art. 7]

biens aéronautiques [Abrogée, 2012, ch. 31, art. 414]

cession Cession déposée chez le séquestre officiel. (*assignment*)

conjoint de fait La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*)

conseiller juridique Toute personne qualifiée, en vertu du droit de la province, pour donner des avis juridiques. (*legal counsel*)

contrat financier admissible Contrat d'une catégorie prescrite. (*eligible financial contract*)

convention collective S'agissant d'une personne insolvable, s'entend au sens donné à ce terme par les règles de droit applicables aux négociations collectives entre elle et l'agent négociateur. (*collective agreement*)

créancier Personne titulaire d'une réclamation prouvable à ce titre sous le régime de la présente loi. (*creditor*)

Special services

(6) An inspector duly authorized by the creditors or by the other inspectors to perform special services for the estate may be allowed a special fee for those services, subject to approval of the court, which may vary that fee as it deems proper having regard to the nature of the services rendered in relation to the obligations of the inspector to the estate to act in good faith for the general interests of the administration of the estate.

R.S., 1985, c. B-3, s. 120; 1992, c. 27, s. 49; 2001, c. 4, s. 30; 2004, c. 25, s. 65(F); 2005, c. 47, s. 85.

Claims Provable

Claims provable

121 (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

Contingent and unliquidated claims

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.

Debts payable at a future time

(3) A creditor may prove a debt not payable at the date of the bankruptcy and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Family support claims

(4) A claim in respect of a debt or liability referred to in paragraph 178(1)(b) or (c) payable under an order or agreement made before the date of the initial bankruptcy event in respect of the bankrupt and at a time when the spouse, former spouse, former common-law partner or child was living apart from the bankrupt, whether the order or agreement provides for periodic amounts or lump sum amounts, is a claim provable under this Act.

R.S., 1985, c. B-3, s. 121; 1992, c. 27, s. 50; 1997, c. 12, s. 87; 2000, c. 12, s. 14.

Services spéciaux

(6) Un inspecteur régulièrement autorisé par les créanciers ou par les autres inspecteurs à exécuter des services spéciaux pour le compte de l'actif peut avoir droit à des honoraires spéciaux pour ces services, sous réserve de l'approbation du tribunal qui peut modifier ces honoraires comme il le juge à propos eu égard à la nature des services rendus par rapport à l'obligation qu'a l'inspecteur d'agir de bonne foi en vue de l'intérêt général de l'administration de l'actif.

L.R. (1985), ch. B-3, art. 120; 1992, ch. 27, art. 49; 2001, ch. 4, art. 30; 2004, ch. 25, art. 65(F); 2005, ch. 47, art. 85.

Réclamations prouvables

Réclamations prouvables

121 (1) Toutes créances et tous engagements, présents ou futurs, auxquels le failli est assujetti à la date à laquelle il devient failli, ou auxquels il peut devenir assujetti avant sa libération, en raison d'une obligation contractée antérieurement à cette date, sont réputés des réclamations prouvables dans des procédures entamées en vertu de la présente loi.

Décision

(2) La question de savoir si une réclamation éventuelle ou non liquidée constitue une réclamation prouvable et, le cas échéant, son évaluation sont décidées en application de l'article 135.

Créances payables à une date future

(3) Un créancier peut établir la preuve d'une créance qui n'est pas échue à la date de la faillite, et recevoir des dividendes tout comme les autres créanciers, en en déduisant seulement un rabais d'intérêt au taux de cinq pour cent par an calculé à compter de la déclaration d'un dividende jusqu'à la date où la créance devait échoir selon les conditions auxquelles elle a été contractée.

Réclamations alimentaires

(4) Constitue une réclamation prouvable la réclamation pour une dette ou une obligation mentionnée aux alinéas 178(1)b) ou c) découlant d'une ordonnance judiciaire rendue ou d'une entente conclue avant l'ouverture de la faillite et à un moment où l'époux, l'ex-époux ou ancien conjoint de fait ou l'enfant ne vivait pas avec le failli, que l'ordonnance ou l'entente prévoie une somme forfaitaire ou payable périodiquement.

L.R. (1985), ch. B-3, art. 121; 1992, ch. 27, art. 50; 1997, ch. 12, art. 87; 2000, ch. 12, art. 14.

Constitutional Law of Canada, 5th Edition

Constitutional Law of Canada, 5th Edition
Part II. Distribution of Power
Chapter 29. Public Property
I. Distribution of Public Property
§ 29:1. Distribution of public property

Constitutional Law of Canada, 5th Ed. § 29:1

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§ 29:1. Distribution of public property

Legal Topics

At the time of confederation, it was necessary to apportion the assets and liabilities of the confederating provinces between the new Dominion and the provinces. This was accomplished by various sections in Part VIII of the Constitution Act, 1867. Section 108 conveyed from the provinces to the Dominion the property listed in the third schedule to the Act. The schedule includes canals, public harbours, lighthouses and piers, steamboats, dredges and public vessels, rivers and lake improvements, railways, military roads, customs houses, post offices and other public buildings, ordinance and military property and lands set apart for general public purposes. Section 117 provided that the provinces should retain their "public property not otherwise disposed of by this Act", and s. 109 reinforced this residuary provision by providing that "all lands, mines, minerals, and royalties belonging to the several

provinces" should continue to belong to the provinces.[1]

These provisions, along with the rest of the Constitution Act, 1867, applied only to the four original provinces of Ontario, Quebec, New Brunswick and Nova Scotia. As new provinces were admitted, special arrangements with respect to public property had to be made in each case, but subject to some modifications the terms of the Constitution Act, 1867 were made applicable to each new province. A striking exception to the general application of the Act was the reservation by the Dominion of Crown lands in the provinces which were carved out of federal territories, that is, the three prairie provinces of Alberta, Saskatchewan and Manitoba. The purpose of the reservation was to facilitate federal policies with respect to immigration, land settlement and railways; but it meant that in the prairie provinces the Dominion owned the natural resources that in the other provinces belonged to the province by virtue of ss. 109 and 117. This continued until 1930, when the Natural Resources Agreements were entered into by the Dominion with the three prairie provinces, transferring to the provinces the type of assets which belonged to the other provinces. These agreements were confirmed, and given overriding effect, by the Constitution Act, 1930.[2]

Footnotes

1 For details, see La Forest, Natural Resources and Public Property under the Canadian Constitution (1968), chs. 1–7. There is also a note in Laskin, Canadian Constitutional Law (5th ed., 1986 by Finkelstein), 662–667. See also the symposium, "The Natural Resources Transfer Agreements at 75" (2007) 12 Rev. of Con. Studies 127–300.

2 R.S.C. 1985, Appendix II, No. 26. The Agreements are scheduled to the Act. For commentary, see La Forest, Natural Resources and Public Property under the Canadian Constitution (1968), ch. 3. The Constitution Act, 1930 also confirmed an agreement with B.C., under which Canada conveyed back to B.C. the Railway Belt and Peace River Block. These were lands that had been conveyed to Canada to assist in the financing of the Canadian Pacific Railway, but which had not in fact been used for that purpose.

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Constitutional Law of Canada, 5th Ed. § 29:3

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§ 29:3. Executive power over public property

Legal Topics

The federal and provincial governments have full executive powers over their respective public properties. It is neither necessary nor accurate to invoke the royal prerogative to explain the Crown's power over its property. As a legal person,[1] the Crown in right of Canada or the Crown in right of a province has the power to do anything that other legal persons (individuals or corporations) can do.[2] Thus, unless there are legislative[3] or constitutional[4] restrictions applicable to a piece of public property, it may be sold, mortgaged, leased, licensed or managed at the pleasure of the responsible government, and without the necessity of legislation.[5] The Crown's power to do these things is not a prerogative power, because the power is not unique to the Crown, but is possessed in common with other legal persons.[6] Moreover, in the role

of proprietor, the Crown can (subject to market conditions) insist upon the inclusion in leases, licences or other instruments of any terms that a private proprietor could insist upon. These include terms that in other contexts would be outside the province's power to impose by legislation.[7]

A province's ownership of natural resources, such as oil and gas, or other minerals,[8] gives it much more power over the resources than it possesses over privately-owned resources. The exploitation of a provincially-owned resource can be controlled by the province, either by the province directly producing and selling the resource, or by the province granting permits, leases or licences that authorize private firms to produce and sell the resource. Obviously, the rate of production, the degree of processing within the province and (subject to market conditions) the price at which it is to be sold can be controlled by the province as proprietor. These matters could not necessarily be controlled in the case of privately-owned resources, because legislation would be necessary, and there are limits to provincial legislative power over natural resources, especially those resources destined for export from the province.[9] Similarly, a province can profit from the exploitation of provincially-owned resources in a variety of ways: by direct sales or by licence fees, rents or royalties. A province can profit from the exploitation of privately-owned resources only through taxes, and there are limits to provincial legislative power to levy taxes on natural resources.[10]

All Canadian governments are extensively involved in commercial activities, either directly or through Crown corporations. Governments sell liquor, electricity, insurance, books, wheat, eggs and other natural products. They own or owned railways, airlines, pipelines, telephone systems and radio and television networks. Nor do a government's commercial activities have to coincide with the legislative power of that

level of government. The activities are premised on powers which flow from the ownership and control of property, not on the catalogue of legislative powers which are independent of property ownership. [11]

Footnotes

1 See ch. 10, The Crown, under heading § 10:1, “Definition of the Crown”.

2 La Forest, Natural Resources and Public Property under the Canadian Constitution (1968), 143, 167. For a contrary view, see the discussion in § 29:2, “Legislative power over public property”.

3 An example of a legislative restriction would be provincial land acquired or set aside for a hospital. If the hospital purpose was imposed by statute, then any inconsistent executive dealing with the land would be illegal. The Crown's prerogative or common law powers may be displaced by a statute: A.-G. v. De Keyser's Royal Hotel, [1920] A.C. 508 (prerogative power of expropriation displaced by statute). Of course, a legislative restriction can always be removed or modified by statute.

4 An example of a constitutional restriction would be lands reserved for the Indians, which, although owned by the province, are subject to federal legislative power under s. 91(24): see ch. 28, Aboriginal Peoples.

5 La Forest, Natural Resources and Public Property under the Canadian Constitution (1968), 19–21, argues persuasively that no legislative authority is necessary, although in practice of course each jurisdiction regulates the disposition of Crown lands by statute. For a contrary view, see the discussion in § 29:2,

“Legislative power over public property”.

6 The term prerogative is sometimes used to include all of the common law powers of the Crown, but in my view it should not include those common law powers that are not unique to the Crown: see ch. 1, Sources, under heading § 1:9, “Prerogative”.

7 A.-G. B.C. v. Deeks Sand and Gravel Co., [1956] S.C.R. 336 (royalty that might have been ultra vires if enacted upheld as a contract). The conditions in Smylie v. The Queen (1900), 27 O.A.R. 172 (Ont. C.A.) and Brooks-Bidlake and Whittall v. A.-G. B.C., [1923] A.C. 450 could have been imposed without authorizing legislation.

8 Throughout Canada, provincial governments have usually retained title to timber lands, issuing licences to permit their exploitation. As a result, most timber lands are still provincially owned. Most mineral rights in Ontario, Quebec and the Atlantic provinces are privately owned. Offshore resources are in effect owned by the federal government, which has the exclusive right to explore for and exploit them, although revenue-sharing and management agreements have been entered into with the coastal provinces: ch. 30, Natural Resources, under heading §§ 30:11 to 30:14, “Offshore minerals”. The provinces also have the power to expropriate privately owned lands or mineral rights, as Saskatchewan did in 1973 in order to gain greater control over its oil and gas.

9 Central Canada Potash Co. v. Govt. of Sask., [1979] 1 S.C.R. 42, striking down provincial scheme for the prorationing of production and fixing the price of potash. Laskin C.J. for the Court emphasized (at p. 72) that the government of Saskatchewan was acting “not under proprietary right but in pursuance of legislative and statutory authority directed to proprietary rights of others”. Since this decision, provincial power to regulate natural resources has been enlarged by s. 92A of the Constitution Act, 1867 (added in 1982):

see ch. 21, Property and Civil Rights, under heading § 21:14, "Provincial power".

10 Canadian Industrial Gas & Oil v. Govt. of Sask., [1978] 2 S.C.R. 545, striking down a "mineral income tax" on oil produced on private land and a "royalty surcharge" on oil produced on Crown land. (Much of the Crown land had been expropriated from private owners, in order to make it subject to royalties, rather than taxation.) The Court held that the "royalty surcharge" was a tax rather than a royalty, because it was imposed on land already subject to oil leases, and the leases did not authorize the additional royalty. The additional royalty could only be imposed by legislation, which meant taxation. Since this decision, provincial power to tax natural resources has been enlarged by s. 92A(4) of the Constitution Act, 1867 (added in 1982): see ch. 31, Taxation, under heading § 31:14, "Resource taxes".

11 Spending, lending, contracting and disposing of property are all alike in this respect: see ch. 6, Financial Arrangements, under heading §§ 6:8 to 6:9, "Spending power".

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Constitutional Law of Canada, 5th Ed. § 30:1

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§ 30:1. Provincial public property

Legal Topics

With respect to minerals[1] owned by a province, we have noticed in the previous chapter on Public Property that the broad range of powers open to a private proprietor is also open to the province as proprietor. This is an important source of regulatory authority over the oil and gas that is found in Alberta and Saskatchewan, because a major part of the oil and gas reserves in each of those provinces is owned by the province.

Once a province ceases to own a resource, its proprietary right is lost. But the provinces of Alberta and Saskatchewan have devised ingenious ways of perpetuating their control through proprietary right. An oil or gas lease, which gives to a private oil producer the right to produce and sell oil or gas from the leased Crown land, may include a “compliance with laws” clause, which obligates the lessee to comply with future

provincial laws, and a “variable royalty” clause, which obligates the lessee to pay whatever royalty is prescribed by future provincial laws.[2] These clauses incorporate into the lease future changes in provincial regulations or royalties. By virtue of these clauses, the grant of the lease does not preclude continued exercise of provincial control by proprietary right. In the absence of these clauses, the lease would be as binding on the Crown as on the private party. Of course, the province by statute could still derogate from the contractual rights and obligations, or regulate or tax the oil and gas after its recovery from the ground (and conversion to private ownership), but this would require the enactment of legislation that would have to satisfy the more stringent tests of validity that are applicable when the province is acting purely as legislator.

Footnotes

1 There is a vast literature on the constitutional law relating to minerals, especially, oil and gas. Especially useful are La Forest, Natural Resources and Public Property under the Canadian Constitution (1968); M. Crommelin, “Jurisdiction over Onshore Oil and Gas in Canada” (1975) 10 U.B.C. L. Rev. 86; J. McEvoy, “On Shore Natural Resource Ownership: Atlantic Canada Perspective” (1986) 10 Dal. L.J. 103. For commentary on s. 29A (the resource amendment of 1982), see W.D. Moull, “Section 92A of the Constitution Act, 1867” (1983) 61 Can. Bar Rev. 715; R.D. Cairns, M.A. Chandler and W.D. Moull, “The Resource Amendment (Section 92A) and the Political Economy of Canadian Federalism” (1985) 23 Osgoode Hall L.J. 253; R.D. Cairns, M.A. Chandler and W.D. Moull, “Constitutional Change and the Private Sector: The Case of the Resource Amendment” (1987) 24 Osgoode Hall L.J. 299.

2 The use, effect and validity of these clauses are discussed by R.J. Harrison, “The Legal Character of Petroleum Licences” (1980) 58 Can. Bar Rev. 483: W.D. Moull, “Natural Resources: Provincial Proprietary Rights” (1983) 21 Alta. L. Rev. 472. The critical point is that the rights and obligations of the lessee must be regarded as stemming from the lease (or other contract) and not from the legislation authorizing the lease. Even so, it is likely that there are some basic terms that cannot be unilaterally changed under these clauses.

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In the Court of Appeal of Alberta

Citation: Excel Energy Inc. v. Alberta, 1997 ABCA 24

Date: 19970110
Docket: 95-15593
Registry: Calgary

Between:

Excel Energy Inc.

Respondent
(Appellant)

- and -

**Her Majesty the Queen
In Right of Alberta**

Appellant
(Respondent)

- and -

**Her Majesty the Queen
In Right of Canada**

Intervenor

The Court:

**The Honourable Mr. Justice Kerans
The Honourable Mr. Justice Irving
The Honourable Madam Justice McFadyen**

**Reasons for Judgment of The Honourable Mr. Justice Kerans
Concurred in by The Honourable Mr. Justice Irving
And Concurred in by The Honourable Madam Justice McFadyen**

APPEAL FROM THE JUDGMENT OF THE HONOURABLE MR. JUSTICE HART Dated the 30th day of September, 1994 Entered on the 22nd day of December, 1994

COUNSEL:

Q. A. Pyrcz and W. Fedun, for the appellant

J. B. Katchen, Q.C. and (Ms.) A. M. Neapole, for the respondent

(Ms.) Wendy Burnham, for the intervenor

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE KERANS

[1] This is an appeal by Alberta from a Queen's Bench ruling that the respondent Excel is entitled to an Alberta royalty tax credit. On appeal, Canada intervened to agree with the position taken by Alberta.

[2] In 1987, a company called Drummond held a "mineral lease" from Alberta, who owned the minerals under a parcel of land in the Province. This parcel had been subjected to unitization, which meant that production came from a larger area and Drummond was to receive a set share of revenue from and to pay a set share of development and production costs for the larger unit. At least from 1987, oil was regularly extracted from the unit and piped to the provincial border. Drummond that year farmed its interest to Excel, which meant that Excel would become responsible to Drummond for those costs and, under certain circumstances, become entitled to a share of Drummond's share in revenue. Pursuant to that agreement, Excel, for each year during the years 1987 to 1990 inclusive, became entitled to 15 per cent of the net revenue Drummond could claim from the unit. For each of these years, Excel reported this revenue as income for tax purposes, but also claimed a royalty tax credit. Alberta re-assessed, and this was appealed to Queen's Bench, who decided that Excel was correct in claiming a credit.

[3] With respect, I am unable to interpret the statute to support the conclusion to which the learned first judge came. I would therefore allow the appeal and reverse his ruling.

[4] Alberta offers the "Alberta royalty tax credit" in s.26.1(2) of the Alberta Corporate Tax Act, R.S.A. 1980, c. A-17, which provides that, subject to adjustments not relevant for this case, a corporation that must report income called Alberta Crown royalty in a taxation year "is entitled to a royalty tax credit" against its income tax in Alberta for that year. By s,26(1)(c) the Alberta Crown royalty is, subject to adjustments not relevant to this case,"… any amount to be included in computing the corporation's income for the year by virtue of paragraph 12(1)(o) of the federal Act…". The federal statute thus invoked is the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.). The relevant terms of s. 12(1)(o) provide:

> There shall be included In computing the income of the taxpayer for a taxation year as income from a business or property … (o) any amount … that … because of an obligation imposed by statute … became receivable in the year by … (i) Her Majesty in right of … a province as a royalty … and that may reasonably be regarded as being in relation to … (ii) the production in Canada (A) of petroleum, natural gas, or related hydrocarbons from an oil or gas well … situated on property in Canada in

which the taxpayer had an interest with respect to which the obligation imposed by statute … applied.

[5] It is common ground that the revenue in question "may reasonably be regarded as being in relation to the production in Canada of hydrocarbons from an oil or gas well situated on property in Canada", and Alberta did not in oral argument aggressively press the unconvincing argument that the property from which the oil was taken was not property "in which the taxpayer had an interest". The key to this dispute is, rather, whether Excel can show compliance with the additional condition that the revenue became receivable "because of an obligation imposed by statute" and, similarly, that its interest is one "with respect to which the obligation imposed by statute applied".

[6] The interpretive problem arises because Parliament used the passive voice to describe the obligation. It did not expressly say upon whom it had in mind the obligation would fall. This drafting vagueness perhaps reflects the fact that, under Alberta law, the Crown royalty is an in rem right. To establish the required statutory obligation, Excel relied upon provisions in the Mines and Minerals Act. R.S.A. 1980, c.M-15. S. 34 provides that " A royalty … is reserved to the Crown in right of Alberta on any mineral recovered pursuant to an agreement." S. 35(3) provided that the royalty interest was deliverable in kind. S. 36 provides that title remains in Alberta even though the royalty is commingled during the extraction and refining process, and indeed remains until the Alberta interest is "disposed of by or on behalf of the Crown". If, then, the producer ever sells the royalty it can only do so as agent for Alberta.

[7] It first must be said that this attempt by Canada to treat an obligation as income is, of course, the creation of a fiction. Nobody but Alberta ever in fact had that royalty or received a penny by way of proceeds from it. Alberta held an in rem interest in the hydrocarbons as they came out of the ground, and, when they were sold, the proceeds, under the scheme of the Alberta Act, went straight to Alberta. The producer could never be anything more than a trustee or agent.

[8] It is at this point that Excel on the one hand, and the two Governments on the other, fail into disagreement. It was said for Alberta and Canada that the "obligation" to which the federal law refers is the legal obligation imposed by s.34 on any person taking a "mineral lease" from Alberta to acknowledge and honour the Alberta royalty by accounting for it and perhaps selling it as Alberta's agent. Excel was neither the lessee nor its assignee and therefore was not obliged to honour the royalty in this direct and immediate way. Drummond or perhaps the unit operator was.

[9] It was said for Excel that the statute does not say that the legal obligation had to be imposed directly upon it, as a personal duty. It was sufficient that the obligation exist in respect of the producing property. In the alternative, it argued that a purposive interpretation would lead to the conclusion that the word “obligation” was intended to be used in an economic not a legal sense. In other words, as the person whose profits from the production would be reduced pro tanto because of the existence of the Alberta royalty, Excel should get the benefit of the tax credit.

[10] The learned chambers judge accepted the first argument for Excel. He said:

> The phrase “receivable in the year by virtue of an obligation imposed by statute” does not require that the amount of royalty so receivable be paid by any particular party. Indeed, the word “payable” is not used. Alberta Crown royalty is not “paid” per se but is “reserved” under the Mines and Minerals Act and, unless otherwise provided by regulation, notionally “delivered in kind” in the words of s. 35 of the Act “to the Crown at the place at which the quantity of the royalty is calculated.”
>
> In my view, therefore, the “amounts” of royalty are no more “receivable” from a working interest owner than they are from a farmee with an interest in net revenue. In both cases the burden of the royalty is borne through a reduction in revenue which would otherwise be derived from the sale of production if the Crown royalty had not been reserved and was not “receivable” by the provincial Crown from the hydrocarbons produced from the reservoir. If the royalty is not “received” s. 44 of the Act empowers the Minister to cancel the lease and all interests therein are lost including working interests, revenue interests and equitable interests.

[11] With respect, I cannot agree. In my view, the purpose of the federal statute is to deem the royalty to be income in the hands of the producer in order to force somebody to pay federal tax on it despite never having owned it nor never having received the benefit of it. The purpose in turn of the Alberta rule was to offer a reduced royalty in the light of the federal initiative. In my view, the federal rule is best read as an exaction only from the person who, for Alberta, actually holds the royalty, or sells it.

[12] I am saved from deciding whether the task before me is to interpret a taxing statute or a granting statute (by which I mean a statute granting a benefit) by the decisions of the Supreme Court of Canada In Stubart Investments Ltd. v. The Queen [1984] 1 S.C.R. 636 at 576; Golden v. The Queen [1986] 1 S.C.R. 209 at 214-215; Bronfman Trust v. The Queen [1987] 1 S.C.R. 32 at 52-53; Atco et al v. Calgary Power Ltd. et al., [1982] 1 2 S.C.R. 557 at 569; Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours [1994] 3 S.C.R. 343 and Symes v. Canada [1993] 4 S.C.R. 695. It seems to me that these decisions validate the view that one no longer should interpret a taxing statute “strictly”, a term that, as I understand it, denotes a rule that I should prefer, if the words can reasonably bear it, the interpretation that would result in the payment of least tax. In the

1896

May 20, 21.

*June 6.

E. T. CARTER (DEFENDANT).....APPELLANT,

AND

LONG & BISBY (PLAINTIFFS).....RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Trust—Principal and agent—Advances to agent to buy goods—Trust goods mixed with those of agent—Replevin—Equitable title.

If an agent is entrusted by his principal with money to buy goods the money will be considered trust funds in his hands and the principal has the same interest in the goods when bought as he had in the funds producing it.

If the goods so bought are mixed with those of the agent the principal has an equitable title to a quantity to be taken from the mass equivalent to the portion of the money advanced which has been used in the purchase, as well as to the unexpended balance.

Under the present system of procedure in Ontario an equitable title to chattels will support an action of replevin.

APPEAL from the decision of the Court of Appeal for Ontario (1), affirming the judgment of the Divisional Court in favour of the plaintiffs.

The material facts of this case are not in dispute. The appellant Carter is the assignee of the insolvent firm of Smith Bros., local wool buyers in Dresden, Ont. The respondents, Long & Bisby, are wool merchants in Hamilton who in 1894, after some correspondence with Smith Bros., who had bought wool for them in former years, advanced to Smith Bros. money with which to buy wool for which they agreed to pay seventeen cents per pound. All the money advanced, except $201, was used by Smith Bros. as agreed and the latter having failed all the wool they had on hand, including

*PRESENT:—Sir Henry Strong C.J. and Taschereau, Sedgewick, King and Girouard JJ.

(1) 23 Ont. App. R. 121.

that bought for Long & Bisby, passed to the assignee, from whom it was replevied by the plaintiffs.

The questions for decision on the appeal were, whether or not the wool in the hands of the assignee was affected with a trust in favour of the plaintiffs, their portion of it never having been set apart or separated from the mass, and whether or not the plaintiffs had sufficient property in the wool to enable them to maintain an action of replevin. The courts below all held in favour of the plaintiffs.

Gibbons Q.C. for the appellants, argued that the property never passed to Long & Bisby and they could not gain possession of it in the face of the statute 55 Vict. ch. 26 (O).

Crerar for the respondents, cited *Pennell* v. *Deffell* (1); *Harris* v. *Truman* (2).

The judgment of the court was delivered by:

THE CHIEF JUSTICE.—I am of opinion that the wool in question in this appeal was trust property and the sum of $200 also in question was a trust fund in the hands of Smith Bros., held by them at the time of their insolvency as trustees for the respondents Messrs. Long & Bisby. I entirely agree that no legal property in the wool had vested in the respondents, but I think they had, for reasons which I will presently state, a clear equitable title to a quantity of wool to be taken out of all the wool Smith Bros. had on hand, equivalent to the funds advanced by them to the insolvents (less $200) at the rate of 17c. per pound, as well as to the balance of trust moneys on hand.

There can be no dispute as to the material facts. The respondents employed Smith Bros. as their agents to buy wool with money furnished by the respondents, for which service the agents were to be paid by any

(1) 4 DeG. M. & G. 372. (2) 9 Q. B. D. 264.

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difference between the amount at which they might be able to purchase the wool and the agreed price of 17 cents per pound. This mode of remuneration did not make it any less a contract of agency than if the commission had been fixed in some other way and the wool had been the exact proceeds of the advances. As to the facts, I entirely agree in the opinion of Mr. Justice Burton expressed in the following extract from his judgment:

> It is clear, I think, upon the letters that it was the intention of both parties that the one should furnish funds to be expended by the other in the purchase of wool as agents, their remuneration being the difference between the sums at which they could purchase and the 17c. which the plaintiffs were willing to allow, and this is made particularly plain by the plaintiff's letter of the 18th of May, in which they decline to entertain a proposal to increase the rate and inclose a cheque for $400 "on account of wool to be purchased for our account," and the reply in which Smith Bros. accept the terms, and those of the previous letter, to keep the wool insured; and Smith Bros. throughout the correspondence lead the plaintiffs to believe that they are holding the wool for them and that they had, on the 14th of June, between 6,000 and 7,000 lbs. in hand, and the learned trial judge has expressly found that Smith Bros. were agents merely for the plaintiffs.

I adopt this as a perfectly correct statement of the facts established by the evidence, and based upon these facts the judgments appealed against appear to me to be well supported as regards the law both by principle and authority.

A great number of cases decided in courts of equity ranging over more than a century have established that trust moneys may always be traced into property of any species into which it may have been converted, in such a way that the court will give the *cestui que trust* as nearly as possible the same interest in the property as that which he had in the money of which it is the produce (1).

(1) See *Re Hallett's estate*, 13 Ch. D. 696.

That money placed in the hands of an agent or other person standing in a fiduciary relationship in order that he may invest it for the benefit of his principal will be considered trust funds within this principle is also commonplace doctrine not calling for any authority.

The case however of *Harris* v. *Truman* (1), if there was any ground for raising a reasonable doubt as to the law, would be conclusive against the appellant. That case in all features which are material exactly resembles the case before us. It proceeded entirely upon the equitable doctrine alluded to. Lord Coleridge at page 268, says:

> The judgment of the court below is founded mainly on two grounds. The first ground is of this nature: When large amounts of money are entrusted to a man to buy goods and carry on a business he becomes a trustee for the person to whom the money belongs and the proceeds of the money are affected with a trust. This is an old and well established doctrine in equity; it applies where the relation of principal and agent in the ordinary sense of the word does not exist. According to this doctrine where a confidence is created between two persons and where the one receives the money on the faith that he will do a certain thing and leads the other who has given the money to understand that the thing has been done, as between these two persons it is considered in equity to have been done. Therefore the person receiving the money is bound to hold what he gets for the person giving the money. I think that this ground is quite right.

The learned counsel for the appellant, whilst admitting the principles propounded in the case of *Harris* v. *Truman* (1), endeavoured to distinguish it from the present case on two grounds. First it was said that *Harris* v. *Truman* (1) was (as no doubt it was) a case of fraud on the part of the trustee or quasi-trustee, that the doctrine in question is never applied except in cases of fraudulent conduct on the part of the person who stands in a fiduciary position, and that in the present case there

(1) 7 Q. B. D. 340; 9 Q. B. D. 264.

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had been no fraudulent or dishonest conduct on the part of Smith Bros. I quite agree that no such imputation can be made against the agents in this case; but I entirely deny the proposition that courts of equity only apply the doctrine in cases of fraud. On the contrary, wherever the operation of the equity is essential to the protection of the person beneficially entitled who is considered in equity to be the owner of the property, however innocent the conduct of the fiduciary legal owner may have been a court of equity will always intervene. If there were any such distinction as that suggested it could only proceed upon the ground that the court acted *in pœnam* against a wrong doer, but such a mode of proceeding has been disclaimed over and over again by equity judges.

Then it was said, and with perhaps a little more force and reason, that the authority of *Harris* v. *Truman* (1) could not apply here, inasmuch as in that case all the malt and barley seized by the defendants had been or were presumed to have been purchased with the money of the defendants, whilst in the present case Smith Bros. had mixed the wool bought for the respondents and their own wool together, so that the wool which the respondents claimed title to could not be distinguished for the purposes of an action of replevin.

It has been already said that there is not the slightest ground for any imputation of wrongful conduct against the trustees or agents, and this applies to the mixing of the wool as well as in all other respects (2). Where the owner of chattels, having the legal property in them, has had his property mixed with similar chattels belonging to other persons so that out of the

(1) 7 Q. B. D. 340; 9 Q. B. D. 264.

(2) 9 Q. B. D. 268.

mass thus commingled the chattels originally belonging to each person are indistinguishable, as in the case which has so frequently happened of a quantity of saw-logs being thus mixed (1), the rule at common law is that where this has been done without fraud or wrong an original owner is entitled to take from the mass an equivalent in quantity and quality for the property which he has lost by the mixing, and he is treated as having a legal title to such property.

Then if this can be done where goods are mixed in which the several parties interested all have legal titles, there is no reason why it should not be equally applicable when the title of one of the parties is, as in the present case, equitable merely.

In his judgment in *Harris* v. *Truman* (2), Lord Coleridge addresses himself to this point also ; he says :

> I think that the second ground of the Queen's Bench Division is right also. A person placed in a fiduciary relation with another may have dealings of his own and may mix up his own dealings with the dealings on behalf of his *cestui que trust*, but it has been held in courts of equity that when a fiduciary relationship has been created in respect of a fund which has been misapplied, and when it cannot be shown what portion of the proceeds of the fund is really subject to the trust, the trust shall be considered to be attached to the whole of the proceeds and it shall not lie in the mouth of the trustee to say that any portion of those proceeds is not affected with the trust.

This appears to me to show conclusively that the respondents might have done here just what was done by the defendants in *Harris* v. *Truman* (2), namely, have seized, not through an act of the law but by their own act, the same goods which they actually seized here by means of this action of replevin. I am not aware of any authority, shewing that under the present system of procedure an equitable title to chattel property is not sufficient to support an action

(1) See Cooley on Torts (2 ed.) p. 68 and cases there cited.

(2) 7 Q. B. D. 340 ; 9 Q. B. D. 264.

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of replevin, and there is no good reason that I can see why it should not be sufficient. It is true that the more apt remedy would seem to be an action for the specific delivery of the property which before judgment might be protected provisionally by the interim remedies of an injunction and receiver. This would be in conformity with the practice which prevailed before the fusion of the two jurisdictions. Although not ordinarily interfering in the case of chattels, courts of equity would always take jurisdiction in two cases viz., where the chattel was of peculiar value so that damages would be no adequate compensation, a ground with which we are not concerned in this case. The other ground was where a fiduciary relationship existed between the parties; there, irrespective altogether of the nature and value of the property, the jurisdiction of equity could always be invoked for the protection of the *cestui que trust* (1).

The $201, the unexpended balance of the advances made by the respondents, was of course a sum of trust money; that it was a balance of the last remittance appears from the evidence of William T. Smith, who proves that when the Smiths proposed to draw it out of the bank in order to return it to the respondents, the bank manager persuaded him to leave it in his hands on the distinct understanding that it was Long & Bisby's money.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Gibbons, Mulkern & Harper.*

Solicitor for the respondents: *Crerar, Crerar & Bankier.*

(1) See *Pooley* v. *Budd* 14 Beav. 34; *Fuller* v. *Richmond* 2 Gr. 24; *Flint* v. *Corby* 4 Gr. 45.

CARSWELL

THE 2022-2023 ANNOTATED BANKRUPTCY AND INSOLVENCY ACT

Including
General Rules under the Act
Orderly Payment of Debts Regulations
Companies' Creditors Arrangement Act
CCAA Regulations and Forms
Farm Debt Mediation Act
Wage Earner Protection Program Act
Directives and Circulars

Dr. Janis Sarra, B.A., M.A., LL.B., LL.M., S.J.D.
of University of British Columbia
Faculty of Law and the Ontario Bar

The Honourable Geoffrey B. Morawetz, B.A., LL.B.
of the Superior Court of Justice

The Honourable L. W. Houlden, B.A., LL.B.
1922-2012, formerly a Judge of the Court of Appeal for Ontario

STATUTES OF CANADA ANNOTATED

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relief for heating expenses (RHE). The Superintendent of Bankruptcy issued a statement outlining Superintendent's position on the handling of the tax credit by trustees. The RHE cannot be considered part of the assets of the bankruptcy and consequently, must be paid in full to bankrupts. The RHE is intended for the most disadvantaged in society. RHE payments are related to beneficiaries' essential needs as provided for in paragraph 67(1) of the *BIA*.

This policy also applies to provincial relief for heating expenses. The RHE credit is not subject to Rule 59 and must be refunded to the bankrupt in its entirety, despite the fact that the RHE calculation is based on the eligibility for a GST credit.

§ 5:82 Bankrupt Acting as Agent

If an agent goes into bankruptcy, the principal is entitled as against the trustee to all money owing to the bankrupt in its capacity as agent and to recover and trace all money and property received by the bankrupt as agent for the principal. If the property has been mixed with other property of a similar nature, the principal is entitled as against the trustee of the agent to take from the mass an equivalent for the property that it has lost by the mixing: *Carter v. Long* (1896), 26 S.C.R. 430.

If the bankrupt was acting as agent for collection of amounts due to a principal, no property in the amounts falling due after the date of bankruptcy passes to the trustee. When bankruptcy occurs, all authority of the bankrupt as agent comes to an end, and the trustee must turn over to the principal any money collected after the date of bankruptcy: *J-V Import Co. v. Deloitte & Touche Inc.* (1992), 12 C.B.R. (3d) 200 (B.C. S.C.).

While the relationship between a customer and a commodity broker is one of principal and agent, which is fiduciary in nature, that does not necessarily mean that property received by an agent on behalf of the principal is received in trust or subject to a proprietary interest in favour of the principal. The rights and duties arising out of the relationship are governed by the contract. For the relationship to constitute that of trustee and beneficiary, there must be a specific agreement in that regard, including a provision that monies be held separately and are to be paid to the principal from the trust. Where no such agreement exists, the relationship is simply that of debtor and creditor: *Re Agritrans Logistics Ltd.* (2003), 2003 CarswellMan 316, 45 C.B.R. (4th) 1 (Man. Q.B.).

Where merchandise is sold by a manufacturer to a distributor under an arrangement by which the distributor is to sell the merchandise but is not obligated to keep the proceeds of sale segregated but is entitled to mix them with its own, the relationship between the manufacturer and the distributor is not that of trustee and *cestui que trust* but debtor and creditor. The accounts receivable generated by the sales made by the distributor can be claimed by a bank holding a general assignment of receivables from the distributor: *Re General Publishing Co.* (2002), 34 C.B.R. (4th) 186, 2002 CarswellOnt 1889 (Ont. C.A.).

§ 5:83 Goods Delivered on Approval

Where goods are delivered to the debtor on approval the property in such goods, they do not pass to the trustee. However, although goods might have been delivered to the debtor on approval, by retaining them beyond a reasonable time for their return, the debtor may have signified his or her acceptance thereof. Under such circumstances, the property in the goods passes to the debtor, and the trustee in the bankruptcy of the debtor will be entitled to the goods or payment therefor: *Re Tavens* (1942), 23 C.B.R. 270 (Ont.); *Ellis v. Sternbergs Estate* (1925), 5 C.B.R. 608 (Ont. S.C.).

If goods are delivered to the bankrupt on approval, the bankrupt cannot accept them as contemplated by the *Sale of Goods Act* by delivering them to a creditor in satisfaction of a pre-existing debt. The trustee will have the right to attack such a transaction as a preference: *Re Sternberg* (1924), 5 C.B.R. 237 (Ont. C.A.).

§ 5:84 Goods Delivered on Sale or Return

Where goods are delivered on a sale or return basis, the buyer has possession with an option of returning the goods within a reasonable time: *Ex parte Wingfield* (1879), 10 Ch.D. 591. If the buyer does not exercise the option of purchasing the goods or has not kept them for an unreasonable time and the buyer goes into bankruptcy, the property does not pass to the trustee, but the seller is entitled to the return of the goods: *Sinnott News Co. Ltd. v. M.N.R.*, [1956] S.C.R. 433.

§ 5:85 Goods Delivered Under Conditional Sales Agreement

When goods are sold to the debtor under a conditional sales agreement, the ownership in the goods sold remains in the vendor until payment and the trustee of the debtor is not entitled to the goods until the condition has been fulfilled, *i.e.* the purchase price has been paid in full: *Sunshine*

2012 SCC 67
Supreme Court of Canada

AbitibiBowater Inc., Re

2012 CarswellQue 12490, 2012 CarswellQue 12491, 2012 SCC 67, [2012] 3 S.C.R. 443, [2012] A.C.S. No. 67, [2012] S.C.J. No. 67, 221 A.C.W.S. (3d) 264, 352 D.L.R. (4th) 399, 438 N.R. 134, 71 C.E.L.R. (3d) 1, 95 C.B.R. (5th) 200, J.E. 2012-2270

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

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

Heard: November 16, 2011
Judgment: December 7, 2012
Docket: 33797

Proceedings: affirmed *AbitibiBowater Inc., Re* (2010), 68 C.B.R. (5th) 57, 52 C.E.L.R. (3d) 1, 2010 CarswellQue 4782, 2010 QCCA 965, Chamberland J.A. (C.A. Que.); refused leave to appealdemande d'autorisation d'en appeler refusée *AbitibiBowater Inc., Re* (2010), 68 C.B.R. (5th) 1, 52 C.E.L.R. (3d) 17, 2010 QCCS 1261, 2010 CarswellQue 2812, Clément Gascon J.C.S (C.S. Que.)

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Robert I. Thornton, John T. Porter, Rachelle F. Moncur, for Intervener, Ernst & Young Inc., as Monitor
William A. Amos, Anastasia M. Lintner, Hugh S. Wilkins, R. Graham Phoenix, for Intervener, Friends of the Earth Canada

Subject: Insolvency; Environmental

APPEAL by province from decision reported at *AbitibiBowater Inc., Re* (2010), 68 C.B.R. (5th) 57, 52 C.E.L.R. (3d) 1, 2010 CarswellQue 4782, 2010 QCCA 965 (C.A. Que.), denying leave to appeal decision dismissing its motion for declaration that claims procedure order issued under *Environmental Protection Act* (Nfld.) did not bar province from enforcing orders requiring debtor to perform remedial work.

POURVOI formé par la province à l'encontre d'une décision publiée à *AbitibiBowater Inc., Re* (2010), 68 C.B.R. (5th) 57, 52 C.E.L.R. (3d) 1, 2010 CarswellQue 4782, 2010 QCCA 965 (C.A. Que.), ayant refusé d'accorder la permission d'interjeter appel à l'encontre d'une décision ayant rejeté sa requête visant à faire déclarer que l'ordonnance relative à la procédure de réclamations émise en vertu de l'*Environmental Protection Act* n'empêchait pas la province d'exécuter les ordonnances enjoignant la débitrice d'exécuter des travaux de décontamination.

***Deschamps J.*:**

1 The question in this appeal is whether orders issued by a regulatory body with respect to environmental remediation work can be treated as monetary claims under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*").

2 Regulatory bodies may become involved in reorganization proceedings when they order the debtor to comply with statutory rules. As a matter of principle, reorganization does not amount to a licence to disregard rules. Yet there are circumstances in which valid and enforceable orders will be subject to an arrangement under the *CCAA*. One such circumstance is where a regulatory body makes an environmental order that explicitly asserts a monetary claim.

3 In other circumstances, it is less clear whether an order can be treated as a monetary claim. The appellant and a number of interveners posit that an order issued by an environmental body is not a claim under the *CCAA* if the order does not require the debtor to make a payment. I agree that not all orders issued by regulatory bodies are monetary in nature and thus provable claims in an insolvency proceeding, but some may be, even if the amounts involved are not quantified at the outset of the proceeding. In the environmental context, the *CCAA* court must determine whether there are sufficient facts indicating the existence of an environmental duty that will ripen into a financial liability owed to the regulatory body that issued the order. In such a case, the relevant question is not simply whether the body has formally exercised its power to claim a debt. A *CCAA* court does not assess claims — or orders — on the basis of form alone. If the order is not framed in monetary terms, the court must determine, in light of the factual matrix and the applicable statutory framework, whether it is a claim that will be subject to the claims process.

4 The case at bar concerns contamination that occurred, prior to the *CCAA* proceedings, on property that is largely no longer under the debtor's possession and control. The *CCAA* court found on the facts of this case that the orders issued by Her Majesty the Queen in right of the Province of Newfoundland and Labrador ("Province") were simply a first step towards remediating the contaminated property and asserting a claim for the resulting costs. In the words of the *CCAA* court, "the intended, practical and realistic effect of the *EPA* Orders was to establish a basis for the Province to recover amounts of money to be eventually used for the remediation of the properties in question" (2010 QCCS 1261, 68 C.B.R. (5th) 1 (C.S. Que.), at para. 211). As a result, the *CCAA* court found that the orders were clearly monetary in nature. I see no error of law and no reason to interfere with this finding of fact. I would dismiss the appeal with costs.

I. Facts and Procedural History

5 For over 100 years, AbitibiBowater Inc. and its affiliated or predecessor companies (together, "Abitibi") were involved in industrial activity in Newfoundland and Labrador. In 2008, Abitibi announced the closure of a mill that was its last operation in that province.

6 Within two weeks of the announcement, the Province passed the *Abitibi-Consolidated Rights and Assets Act*, S.N.L. 2008, c. A-1.01 ("*Abitibi Act*"), which immediately transferred most of Abitibi's property in Newfoundland and Labrador to the Province and denied Abitibi any legal remedy for this expropriation.

7 The closure of its mill in Newfoundland and Labrador was one of many decisions Abitibi made in a period of general financial distress affecting its activities both in the United States and in Canada. It filed for insolvency protection in the United States on April 16, 2009. It also sought a stay of proceedings under the *CCAA* in the Superior Court of Quebec, as its Canadian head office was located in Montreal. The *CCAA* stay was ordered on April 17, 2009.

8 In the same month, Abitibi also filed a notice of intent to submit a claim to arbitration under NAFTA (the *North American Free Trade Agreement Between the Government of the United Mexican States and the Government of the United States of America*, Can. T.S. 1994 No. 2) for losses resulting from the *Abitibi Act*, which, according to Abitibi, exceeded $300 million.

9 On November 12, 2009, the Province's Minister of Environment and Conservation ("Minister") issued five orders ("*EPA* Orders") under s. 99 of the *Environmental Protection Act*, S.N.L. 2002, c. E-14.2 ("*EPA*"). The *EPA* Orders required Abitibi to submit remediation action plans to the Minister for five industrial sites, three of which had been expropriated, and to complete the approved remediation actions. The *CCAA* judge estimated the cost of implementing these plans to be from "the mid-to-high eight figures" to "several times higher" (para. 81).

10 On the day it issued the *EPA* Orders, the Province brought a motion for a declaration that a claims procedure order issued under the *CCAA* in relation to Abitibi's proposed reorganization did not bar the Province from enforcing the *EPA* Orders. The Province argued — and still argues — that non-monetary statutory obligations are not "claims" under the *CCAA* and hence cannot be stayed and be subject to a claims procedure order. It further submits that Parliament lacks the constitutional competence under its power to make laws in relation to bankruptcy and insolvency to stay orders that are validly made in the exercise of a provincial power.

11 Abitibi contested the motion and sought a declaration that the *EPA* Orders were stayed and that they were subject to the claims procedure order. It argued that the *EPA* Orders were monetary in nature and hence fell within the definition of the word "claim" in the claims procedure order.

12 Gascon J. of the Quebec Superior Court, sitting as a *CCAA* court, dismissed the Province's motion. He found that he had the authority to characterize the orders as "claims" if the underlying regulatory obligations "remain[ed], in a particular fact pattern, truly financial and monetary in nature" (para. 148). He declared that the *EPA* Orders were stayed by the initial stay order and were not subject to the exception found in that order. He also declared that the filing by the Province of any claim based on the *EPA* Orders was subject to the claims procedure order, and reserved to the Province the right to request an extension of time to assert a claim under the claims procedure order and to Abitibi the right to contest such a request.

13 In the Court of Appeal, Chamberland J.A. denied the Province leave to appeal (2010 QCCA 965, 68 C.B.R. (5th) 57 (C.A. Que.)). In his view, the appeal had no reasonable chance of success, because Gascon J. had found as a fact that the *EPA* Orders were financial or monetary in nature. Chamberland J.A. also found that no constitutional issue arose, given that the Superior Court judge had merely characterized the orders in the context of the restructuring process; the judgment did not "'immunise' Abitibi from compliance with the EPA Orders" (para. 33). Finally, he noted that Gascon J. had reserved the Province's right to request an extension of time to file a claim in the *CCAA* process.

II. Positions of the Parties

14 The Province argues that the *CCAA* court erred in interpreting the relevant *CCAA* provisions in a way that nullified the *EPA*, and that the interpretation is inconsistent with both the ancillary powers doctrine and the doctrine of interjurisdictional immunity. The Province further submits that, in any event, the *EPA* Orders are not "claims" within the meaning of the *CCAA*. It takes the position that "any plan of compromise and arrangement that Abitibi might submit for court approval must make provision for compliance with the EPA Orders" (A.F., at para. 32).

15 Abitibi contends that the factual record does not provide a basis for applying the constitutional doctrines. It relies on the *CCAA* court's findings of fact, particularly the finding that the Province's intent was to establish the basis for a monetary claim. Abitibi submits that the true issue is whether a province that has a monetary claim against an insolvent company can obtain a preference against other unsecured creditors by exercising its regulatory power.

III. Constitutional Questions

16 At the Province's request, the Chief Justice stated the following constitutional questions:

> 1. Is the definition of "claim" in s. 2(1) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, *ultra vires* the Parliament of Canada or constitutionally inapplicable to the extent this definition includes statutory duties to which the debtor is subject pursuant to s. 99 of the *Environmental Protection Act*, S.N.L. 2002, c. E-14.2?
>
> 2. Is s. 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, *ultra vires* the Parliament of Canada or constitutionally inapplicable to the extent this section gives courts jurisdiction to bar or extinguish statutory duties to which the debtor is subject pursuant to s. 99 of the *Environmental Protection Act*, S.N.L. 2002, c. E-14.2?

3. Is s. 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, *ultra vires* the Parliament of Canada or constitutionally inapplicable to the extent this section gives courts jurisdiction to review the exercise of ministerial discretion under s. 99 of the *Environmental Protection Act*, S.N.L. 2002, c. E-14.2?

17 I note that the question whether a *CCAA* court has constitutional jurisdiction to stay a provincial order that is *not* a monetary claim does not arise here, because the stay order in this case did not affect non-monetary orders. However, the question may arise in other cases. In 2007, Parliament expressly gave *CCAA* courts the power to stay regulatory orders that are not monetary claims by amending the *CCAA* to include the current version of s. 11.1(3) (*An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada, 2005*, S.C. 2007, c. 36, s. 65) ("2007 amendments"). Thus, future cases may give courts the opportunity to consider the question raised by the Province in an appropriate factual context. The only constitutional question that needs to be answered in this case concerns the jurisdiction of a *CCAA* court to determine whether an environmental order that is not framed in monetary terms is in fact a monetary claim.

18 Processing creditors' claims against an insolvent debtor in an equitable and orderly manner is at the heart of insolvency legislation, which falls under a head of power attributed to Parliament. Rules concerning the assessment of creditors' claims, such as the determination of whether a creditor has a monetary claim, relate directly to the equitable and orderly treatment of creditors in an insolvency process. There is no need to perform a detailed analysis of the pith and substance of the provisions on the assessment of claims in insolvency matters to conclude that the federal legislation governing the characterization of an order as a monetary claim is valid. Because the provisions relate directly to Parliament's jurisdiction, the ancillary powers doctrine is not relevant to this case. I also find that the interjurisdictional immunity doctrine is not applicable. A finding that a claim of an environmental creditor is monetary in nature does not interfere in any way with the creditor's activities. Its claim is simply subjected to the insolvency process.

19 What the Province is actually arguing is that courts should consider the form of an order rather than its substance. I see no reason why the Province's choice of order should not be scrutinized to determine whether the form chosen is consistent with the order's true purpose as revealed by the Province's own actions. If the Province's actions indicate that, in substance, it is asserting a provable claim within the meaning of federal legislation, then that claim can be subjected to the insolvency process. Environmental claims do not have a higher priority than is provided for in the *CCAA*. Considering substance over form prevents a regulatory body from artificially creating a priority higher than the one conferred on the claim by federal legislation. This Court recognized long ago that a province cannot disturb the priority scheme established by the federal insolvency legislation: *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453 (S.C.C.). Environmental claims are given a specific, and limited, priority under the *CCAA*. To exempt orders which are in fact monetary claims from the *CCAA* proceedings would amount to conferring upon provinces a priority higher than the one provided for in the *CCAA*.

IV. Claims under the CCAA

20 Several provisions of the *CCAA* have been amended since Abitibi filed for insolvency 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:

[Definition of "claim"]

> **12.** (1) 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*.
>
> [Determination of amount of claim]
>
> (2) 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; and ...

23 Section 12 of the *CCAA* refers to the rules of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"). Section 2 of the *BIA* defines a claim provable in bankruptcy:

> "claim provable in bankruptcy", "provable claim" or "claim provable" includes any claim or liability provable in proceedings under this Act by a creditor.

24 This definition is completed by s. 121 of the *BIA*:

> **121.** (1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

25 *Sections* 121(2) and 135(1.1) of the *BIA* offer additional guidance for the determination of whether an order is a provable claim:

> **121.** . . .
>
> (2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.
>
> **135.** . . .
>
> (1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

26 These provisions highlight three requirements that are relevant to the case at bar. First, there must be a debt, a liability or an obligation to a *creditor*. Second, the debt, liability or obligation must be incurred *before the debtor becomes bankrupt*. Third, it must be possible to attach a *monetary value* to the debt, liability or obligation. I will examine each of these requirements in turn.

27 The *BIA*'s definition of a provable claim, which is incorporated by reference into the *CCAA*, requires the identification of a creditor. Environmental statutes generally provide for the creation of regulatory bodies that are empowered to enforce the obligations the statutes impose. Most environmental regulatory bodies can be creditors in respect of monetary or non-monetary obligations imposed by the relevant statutes. At this first stage of determining whether the regulatory body is a creditor, the question whether the obligation can be translated into monetary terms is not yet relevant. This issue will be broached later. The

only determination that has to be made at this point is whether the regulatory body has exercised its enforcement power against a debtor. When it does so, it identifies itself as a creditor, and the requirement of this stage of the analysis is satisfied.

28 The enquiry into the second requirement is based on s. 121(1) of the *BIA*, which imposes a time limit on claims. A claim must be founded on an obligation that was "incurred before the day on which the bankrupt becomes bankrupt". Because the date when environmental damage occurs is often difficult to ascertain, s. 11.8(9) of the *CCAA* provides more temporal flexibility for environmental claims:

> **11.8**. . . .
>
> (9) A claim against a debtor company for costs of remedying any environmental condition or environmental damage affecting real property of the company shall be a claim under this Act, whether the condition arose or the damage occurred before or after the date on which proceedings under this Act were commenced.

29 The creditor's claim will be exempt from the single proceeding requirement if the debtor's corresponding obligation has not arisen as of the time limit for inclusion in the insolvency process. This could apply, for example, to a debtor's statutory obligations relating to polluting activities that continue after the reorganization, because in such cases, the damage continues to be sustained after the reorganization has been completed.

30 With respect to the third requirement, that it be possible to attach a monetary value to the obligation, the question is whether orders that are not expressed in monetary terms can be translated into such terms. I note that when a regulatory body claims an amount that is owed at the relevant date, that is, when it frames its order in monetary terms, the court does not need to make this determination, because what is being claimed is an "indebtedness" and therefore clearly falls within the meaning of "claim" as defined in s. 12(1) of the *CCAA*.

31 However, orders, which are used to address various types of environmental challenges, may come in many forms, including stop, control, preventative, and clean-up orders (D. Saxe, "Trustees' and Receivers' Environmental Liability Update", 49 C.B.R. (3d) 138, at p. 141). When considering an order that is not framed in monetary terms, courts must look at its substance and apply the rules for the assessment of claims.

32 Parliament recognized that regulatory bodies sometimes have to perform remediation work (see House of Commons, *Standing Committee on Industry*, No. 16, 2nd Sess., 35th Parl., June 11, 1996). When one does so, its claim with respect to remediation costs is subject to the insolvency process, but the claim is secured by a charge on the contaminated real property and certain other related property and benefits from a priority (s. 11.8(8) *CCAA*). Thus, Parliament struck a balance between the public's interest in enforcing environmental regulations and the interest of third-party creditors in being treated equitably.

33 If Parliament had intended that the debtor always satisfy all remediation costs, it would have granted the Crown a priority with respect to the totality of the debtor's assets. In light of the legislative history and the purpose of the reorganization process, the fact that the Crown's priority under s. 11.8(8) *CCAA* is limited to the contaminated property and certain related property leads me to conclude that to exempt environmental orders would be inconsistent with the insolvency legislation. As deferential as courts may be to regulatory bodies' actions, they must apply the general rules.

34 Unlike in proceedings governed by the common law or the civil law, a claim may be asserted in insolvency proceedings even if it is contingent on an event that has not yet occurred (for the common law, see *McLarty v. R.*, 2008 SCC 26, [2008] 2 S.C.R. 79 (S.C.C.), at paras. 17-18; for the civil law, see arts. 1497, 1508 and 1513 of the *Civil Code of Québec*, S.Q. 1991, c. 64). Thus, the broad definition of "claim" in the *BIA* includes *contingent* and *future* claims that would be unenforceable at common law or in the civil law. As for unliquidated claims, a *CCAA* court has the same power to assess their amounts as would a court hearing a case in a common law or civil law context.

35 The reason the *BIA* and the *CCAA* include a broad range of claims is to ensure fairness between creditors and finality in the insolvency proceeding for the debtor. In a corporate liquidation process, it is more equitable to allow as many creditors as possible to participate in the process and share in the liquidation proceeds. This makes it possible to include creditors whose

claims have not yet matured when the corporate debtor files for bankruptcy, and thus avert a situation in which they would be faced with an inactive debtor that cannot satisfy a judgment. The rationale is slightly different in the context of a corporate proposal or reorganization. In such cases, the broad approach serves not only to ensure fairness between creditors, but also to allow the debtor to make as fresh a start as possible after a proposal or an arrangement is approved.

36 The criterion used by courts to determine whether a contingent claim will be included in the insolvency process is whether the event that has not yet occurred is too remote or speculative: *Confederation Treasury Services Ltd., Re* (1997), 96 O.A.C. 75 (Ont. C.A.). In the context of an environmental order, this means that there must be sufficient indications that the regulatory body that triggered the enforcement mechanism will ultimately perform remediation work and assert a monetary claim to have its costs reimbursed. If there is sufficient certainty in this regard, the court will conclude that the order can be subjected to the insolvency process.

37 The exercise by the *CCAA* court of its jurisdiction to determine whether an order is a provable claim entails a certain scrutiny of the regulatory body's actions. This scrutiny is in some ways similar to judicial review. There is a distinction, however, and it lies in the object of the assessment that the *CCAA* court must make. The *CCAA* court does not review the regulatory body's exercise of discretion. Rather, it inquires into whether the facts indicate that the conditions for inclusion in the claims process are met. For example, if activities at issue are ongoing, the *CCAA* court may well conclude that the order cannot be included in the insolvency process because the activities and resulting damages will continue after the reorganization is completed and hence exceed the time limit for a claim. If, on the other hand, the regulatory body, having no realistic alternative but to perform the remediation work itself, simply delays framing the order as a claim in order to improve its position in relation to other creditors, the *CCAA* court may conclude that this course of action is inconsistent with the insolvency scheme and decide that the order has to be subject to the claims process. Similarly, if the property is not under the debtor's control and the debtor does not, and realistically will not, have the means to perform the remediation work, the *CCAA* court may conclude that it is sufficiently certain that the regulatory body will have to perform the work.

38 Certain indicators can thus be identified from the text and the context of the provisions to guide the *CCAA* court in determining whether an order is a provable claim, including whether the activities are ongoing, whether the debtor is in control of the property, and whether the debtor has the means to comply with the order. The *CCAA* court may also consider the effect that requiring the debtor to comply with the order would have on the insolvency process. Since the appropriate analysis is grounded in the facts of each case, these indicators need not all apply, and others may also be relevant.

39 Having highlighted three requirements for finding a claim to be provable in a *CCAA* process that need to be considered in the case at bar, I must now discuss certain policy arguments raised by the Province and some of the interveners.

40 These parties argue that treating a regulatory order as a claim in an insolvency proceeding extinguishes the debtor's environmental obligations, thereby undermining the polluter-pay principle discussed by this Court in *Cie pétrolière Impériale c. Québec (Tribunal administratif)*, 2003 SCC 58, [2003] 2 S.C.R. 624 (S.C.C.) (para. 24). This objection demonstrates a misunderstanding of the nature of insolvency proceedings. Subjecting an order to the claims process does not extinguish the debtor's environmental obligations any more than subjecting any creditor's claim to that process extinguishes the debtor's obligation to pay its debts. It merely ensures that the creditor's claim will be paid in accordance with insolvency legislation. Moreover, full compliance with orders that are found to be monetary in nature would shift the costs of remediation to third-party creditors, including involuntary creditors, such as those whose claims lie in tort or in the law of extra-contractual liability. In the insolvency context, the Province's position would result not only in a super-priority, but in the acceptance of a "third party-pay" principle in place of the polluter-pay principle.

41 Nor does subjecting the orders to the insolvency process amount to issuing a licence to pollute, since insolvency proceedings do not concern the debtor's future conduct. A debtor that is reorganized must comply with all environmental regulations going forward in the same way as any other person. To quote the colourful analogy of two American scholars, "Debtors in bankruptcy have — and should have — no greater license to pollute in violation of a statute than they have to sell cocaine in violation of a statute" (D. G. Baird and T. H. Jackson, "Comment: *Kovacs* and Toxic Wastes in Bankruptcy" (1984), 36 *Stan. L. Rev.* 1199, at p. 1200).

42 Furthermore, corporations may engage in activities that carry risks. No matter what risks are at issue, reorganization made necessary by insolvency is hardly ever a deliberate choice. When the risks materialize, the dire costs are borne by almost all stakeholders. To subject orders to the claims process is not to invite corporations to restructure in order to rid themselves of their environmental liabilities.

43 And the power to determine whether an order is a provable claim does not mean that the court will necessarily conclude that the order before it will be subject to the *CCAA* process. In fact, the *CCAA* court in the case at bar recognized that orders relating to the environment may or may not be considered provable claims. It stayed only those orders that were monetary in nature.

44 The Province also argues that courts have in the past held that environmental orders cannot be interpreted as claims when the regulatory body has not yet exercised its power to assert a claim framed in monetary terms. The Province relies in particular on *Panamericana de Bienes y Servicios S.A. v. Northern Badger Oil & Gas Ltd.* (1991), 81 Alta. L.R. (2d) 45 (Alta. C.A.), and its progeny. In *Panamericana*, the Alberta Court of Appeal held that a receiver was personally liable for work under a remediation order and that the order was not a claim in insolvency proceedings. The court found that the duty to undertake remediation work is owed to the public at large until the regulator exercises its power to assert a monetary claim.

45 The first answer to the Province's argument is that courts have never shied away from putting substance ahead of form. They can determine whether the order is in substance monetary.

46 The second answer is that the provisions relating to the assessment of claims, particularly those governing contingent claims, contemplate instances in which the quantum is not yet established when the claims are filed. Whether, in the regulatory context, an obligation always entails the existence of a correlative right has been discussed by a number of scholars. Various theories of rights have been put forward (see W. N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* (new ed. 2001); D. N. MacCormick, "Rights in Legislation", in P. M. S. Hacker and J. Raz, eds., *Law, Morality, and Society: Essays in Honour of H. L. A. Hart* (1977), 189). However, because the Province issued the orders in this case, it would be recognized as a creditor in respect of a right no matter which of these theories was applied. As interesting as the discussion may be, therefore, I do not need to consider which theory should prevail. The real question is not to whom the obligation is owed, as this question is answered by the statute, which determines who can require that it be discharged. Rather, the question is whether it is sufficiently certain that the regulatory body will perform the remediation work and, as a result, have a monetary claim.

47 The third answer to the Province's argument is that insolvency legislation has evolved considerably over the two decades since *Panamericana*. At the time of *Panamericana*, none of the provisions relating to environmental liabilities were in force. Indeed, some of those provisions were enacted very soon after, and seemingly in response to, that case. In 1992, Parliament shielded trustees from the very liability imposed on the receiver in *Panamericana* (*An Act to amend the Bankruptcy Act and to amend the Income Tax Act in consequence thereof*, S.C. 1992, c. 27, s. 9, amending s. 14 of the *BIA*). The 1997 amendments provided additional protection to trustees and monitors (S.C. 1997, c. 12). The 2007 amendments made it clear that a *CCAA* court has the power to determine that a regulatory order may be a claim and also provided criteria for staying regulatory orders (s. 65, amending the *CCAA* to include the current version of s. 11.1). The purpose of these amendments was to balance the creditor's need for fairness against the debtor's need to make a fresh start.

48 Whether the regulatory body has a contingent claim is a determination that must be grounded in the facts of each case. Generally, a regulatory body has discretion under environmental legislation to decide how best to ensure that regulatory obligations are met. Although the court should take care to avoid interfering with that discretion, the action of a regulatory body is nevertheless subject to scrutiny in insolvency proceedings.

V. Application

49 I now turn to the application of the principles discussed above to the case at bar. This case does not turn on whether the Province is the creditor of an obligation or whether damage had occurred as of the relevant date. Those requirements are easily satisfied, since the Province had identified itself as a creditor by resorting to *EPA* enforcement mechanisms and since the damage had occurred before the time of the *CCAA* proceedings. Rather, the issue centres on the third requirement: that the

orders meet the criterion for admission as a pecuniary claim. The claim was contingent to the extent that the Province had not yet formally exercised its power to ask for the payment of money. The question is whether it was sufficiently certain that the orders would eventually result in a monetary claim. To the *CCAA* judge, there was no doubt that the answer was yes.

50 The Province's exercise of its legislative powers in enacting the *Abitibi Act* created a unique set of facts that led to the orders being issued. The seizure of Abitibi's assets by the Province, the cancellation of all outstanding water and hydroelectric contracts between Abitibi and the Province, the cancellation of pending legal proceedings by Abitibi in which it sought the reimbursement of several hundreds of thousands of dollars, and the denial of any compensation for the seized assets and of legal redress are inescapable background facts in the judge's review of the *EPA* Orders.

51 The *CCAA* judge did not elaborate on whether it was sufficiently certain that the Minister would perform the remediation work and therefore make a monetary claim. However, most of his findings clearly rest on a positive answer to this question. For example, his finding that "[i]n all likelihood, the pith and substance of the EPA Orders is an attempt by the Province to lay the groundwork for monetary claims against Abitibi, to be used most probably as an offset in connection with Abitibi's own NAFTA claims for compensation" (para. 178), is necessarily based on the premise that the Province would most likely perform the remediation work. Indeed, since monetary claims must, both at common law and in civil law, be mutual for set-off or compensation to operate, the Province had to have incurred costs in doing the work in order to have a claim that could be set off against Abitibi's claims.

52 That the judge relied on an implicit finding that the Province would most likely perform the work and make a claim to offset its costs is also shown by the confirmation he found in the declaration by the Minister that the Province was attempting to assess the cost of doing remediation work Abitibi had allegedly left undone and that in the Province's assessment, "at this point in time, there would not be a net payment to Abitibi" (para. 181).

53 The *CCAA* judge's reasons not only rest on an implicit finding that the Province would most likely perform the work, but refer explicitly to facts that support this finding. To reach his conclusion that the *EPA* Orders were monetary in nature, the *CCAA* judge relied on the fact that Abitibi's operations were funded through debtor-in-possession financing and its access to funds was limited to ongoing operations. Given that the *EPA* Orders targeted sites that were, for the most part, no longer in Abitibi's possession, this meant that Abitibi had no means to perform the remediation work during the reorganization process.

54 In addition, because Abitibi lacked funds and no longer controlled the properties, the timetable set by the Province in the *EPA* Orders suggested that the Province never truly intended that Abitibi was to perform the remediation work required by the orders. The timetable was also unrealistic. For example, the orders were issued on November 12, 2009 and set a deadline of January 15, 2010 to perform a particular act, but the evidence revealed that compliance with this requirement would have taken close to a year.

55 Furthermore, the judge relied on the fact that Abitibi was not simply designated a "person responsible" under the *EPA*, but was intentionally targeted by the Province. The finding that the Province had targeted Abitibi was drawn not only from the timing of the *EPA* Orders, but also from the fact that Abitibi was the only person designated in them, whereas others also appeared to be responsible — in some cases, primarily responsible — for the contamination. For example, Abitibi was ordered to do remediation work on a site it had surrendered more than 50 years before the orders were issued; the expert report upon which the orders were based made no distinction between Abitibi's activities on the property, on which its source of power had been horse power, and subsequent activities by others who had used fuelpowered vehicles there. In the judge's opinion, this finding of fact went to the Province's intent to establish a basis for performing the work itself and asserting a claim against Abitibi.

56 These reasons — and others — led the *CCAA* judge to conclude that the Province had not expected Abitibi to perform the remediation work and that the "intended, practical and realistic effect of the EPA Orders was to establish a basis for the Province to recover amounts of money to be eventually used for the remediation of the properties in question" (para. 211). He found that the Province appeared to have in fact taken some steps to liquidate the claims arising out of the *EPA* Orders.

57 In the end, the judge found that there was definitely a claim that "might" be filed, and that it was not left to "the subjective choice of the creditor to hold the claim in its pocket for tactical reasons" (para. 227). In his words, the situation did not involve a "detached regulator or public enforcer issuing [an] order for the public good" (at para. 175), and it was "the hat of a creditor that best [fit] the Province, not that of a disinterested regulator" (para. 176).

58 In sum, although the analytical framework used by Gascon J. was driven by the facts of the case, he reviewed all the legal principles and facts that needed to be considered in order to make the determination in the case at bar. He did at times rely on indicators that are unique and that do not appear in the analytical framework I propose above, but he did so because of the exceptional facts of this case. Yet, had he formulated the question in the same way as I have, his conclusion, based on his objective findings of fact, would have been the same. Earmarking money may be a strong indicator that a province will perform remediation work, and actually commencing the work is the first step towards the creation of a debt, but these are not the only considerations that can lead to a finding that a creditor has a monetary claim. The *CCAA* judge's assessment of the facts, particularly his finding that the *EPA* Orders were the first step towards performance of the remediation work by the Province, leads to no conclusion other than that it was sufficiently certain that the Province would perform remediation work and therefore fall within the definition of a creditor with a monetary claim.

VI. Conclusion

59 In sum, I agree with the Chief Justice that, as a general proposition, an environmental order issued by a regulatory body can be treated as a contingent claim, and that such a claim can be included in the claims process if it is sufficiently certain that the regulatory body will make a monetary claim against the debtor. Our difference of views lies mainly in the applicable threshold for including contingent claims and in our understanding of the *CCAA* judge's findings of fact.

60 With respect to the law, the Chief Justice would craft a standard specific to the context of environmental orders by requiring a "likelihood approaching certainty" that the regulatory body will perform the remediation work. She finds that this threshold is justified because "remediation may cost a great deal of money" (para. 22). I acknowledge that remediating pollution is often costly, but I am of the view that Parliament has borne this consideration in mind in enacting provisions specific to environmental claims. Moreover, I recall that in this case, the Premier announced that the remediation work would be performed at no net cost to the Province. It was clear to him that the *Abitibi Act* would make it possible to offset all the related costs.

61 Thus, I prefer to take the approach generally taken for all contingent claims. In my view, the *CCAA* court is entitled to take all relevant facts into consideration in making the relevant determination. Under this approach, the contingency to be assessed in a case such as this is whether it is sufficiently certain that the regulatory body will perform remediation work and be in a position to assert a monetary claim.

62 Finally, the Chief Justice would review the *CCAA* court's findings of fact. I would instead defer to them. On those findings, applying any legal standard, be it the one proposed by the Chief Justice or the one I propose, the Province's claim is monetary in nature and its motion for a declaration exempting the *EPA* Orders from the claims procedure order was properly dismissed.

63 For these reasons, I would dismiss the appeal with costs.

***McLachlin C.J.C.* (dissenting):**

1. Overview

64 The issue in this case is whether orders made under the *Environmental Protection Act*, S.N.L. 2002, c. E-14.2 ("*EPA*") by the Newfoundland and Labrador Minister of Environment and Conservation (the "Minister") requiring a polluter to clean up sites (the "*EPA* Orders") are monetary claims that can be compromised in corporate restructuring under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*"). If they are not claims that can be compromised in restructuring, the Abitibi respondents ("Abitibi") will still have a legal obligation to clean up the sites following their emergence from restructuring. If

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Orphan Well Association and Alberta Energy Regulator (Appellants) and Grant Thornton Limited and ATB Financial (formerly known as AlbertaTreasury 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)

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

Heard: February 15, 2018
Judgment: January 31, 2019
Docket: 37627

Proceedings: reversing *Orphan Well Assn. v. Grant Thornton Ltd.* (2017), 8 C.E.L.R. (4th) 1, [2017] 6 W.W.R. 301, 50 Alta. L.R. (6th) 1, 47 C.B.R. (6th) 171, 2017 CarswellAlta 695, 2017 ABCA 124, Frans Slatter J.A., Frederica Schutz J.A., Sheilah Martin J.A. (Alta. C.A.); affirming *Grant Thornton Ltd. v. Alberta Energy Regulator* (2016), 33 Alta. L.R. (6th) 221, 37 C.B.R. (6th) 88, [2016] 11 W.W.R. 716, 2016 CarswellAlta 994, 2016 ABQB 278, Neil Wittmann C.J.Q.B. (Alta. Q.B.)

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Subject: Civil Practice and Procedure; Environmental; Estates and Trusts; Insolvency; Natural Resources

APPEAL from judgment reported at *Orphan Well Assn. v. Grant Thornton Ltd.* (2017), 2017 ABCA 124, 2017 CarswellAlta 695, 8 C.E.L.R. (4th) 1, [2017] 6 W.W.R. 301, 50 Alta. L.R. (6th) 1, 47 C.B.R. (6th) 171 (Alta. C.A.), dismissing appeal from judgment dismissing application for declaration that trustee-in-bankruptcy's disclaimer of licensed wells was void and granting cross-application for approval of sales process that excluded renounced wells.

POURVOI formé à l'encontre d'une décision publiée à *Orphan Well Assn. v. Grant Thornton Ltd.* (2017), 2017 ABCA 124, 2017 CarswellAlta 695, 8 C.E.L.R. (4th) 1, [2017] 6 W.W.R. 301, 50 Alta. L.R. (6th) 1, 47 C.B.R. (6th) 171 (Alta. C.A.), ayant rejeté un appel interjeté à l'encontre d'un jugement ayant rejeté une demande visant à faire déclarer que la renonciation du syndic de faillite à des puits autorisés était nulle et ayant accueilli une demande reconventionnelle visant à obtenir l'approbation d'un processus de vente qui excluait les puits ayant fait l'objet d'une renonciation.

Wagner C.J.C. **(Abella, Karakatsanis, Gascon, Brown JJ. concurring):**

I. Introduction

1 The oil and gas industry is a lucrative and important component of Alberta's and Canada's economy. The industry also carries with it certain unavoidable environmental costs and consequences. To address them, Alberta has established a comprehensive cradle-to-grave licensing regime that is binding on companies active in the industry. A company will not be granted the licences that it needs to extract, process or transport oil and gas in Alberta unless it assumes end-of-life responsibilities for plugging and capping oil wells to prevent leaks, dismantling surface structures and restoring the surface to its previous condition. These obligations are known as "reclamation" and "abandonment" (Environmental Protection and Enhancement Act, R.S.A. 2000, c. E-12 (“EPEA”), s. 1(ddd), and Oil and Gas Conservation Act, R.S.A. 2000, c. O-6 (“OGCA”), s. 1(1)(a)).

2 The question in this appeal is what happens to these obligations when a company is bankrupt and a trustee in bankruptcy is charged with distributing its assets among various creditors according to the rules in the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (“BIA”). Redwater Energy Corporation ("Redwater") is the bankrupt company at the centre of this appeal. Its principal assets are 127 oil and gas assets — wells, pipelines and facilities — and their corresponding licences. A few of Redwater's licensed wells are still producing and profitable. The majority of the wells are spent and burdened with abandonment and reclamation liabilities that exceed their value.

3 The Alberta Energy Regulator ("Regulator") and the Orphan Well Association ("OWA") are the appellants in this Court. (For simplicity, I will refer to the Regulator when discussing the appellants' position, unless otherwise noted.) The Regulator administers Alberta's licensing regime and enforces the abandonment and reclamation obligations of licensees. The Regulator has delegated to the OWA, an independent non-profit entity, the authority to abandon and reclaim "orphans", which are oil and gas assets and their sites left behind in an improperly abandoned or unreclaimed state by defunct companies at the close of their insolvency proceedings. The Regulator says that, one way or another, the remaining value of the Redwater estate must be applied to meet the abandonment and reclamation obligations associated with its licensed assets.

4 Redwater's trustee in bankruptcy, Grant Thornton Limited ("GTL"), and Redwater's primary secured creditor, Alberta Treasury Branches ("ATB"), oppose the appeal. (For simplicity, I will refer to GTL when discussing the respondents' position, unless otherwise noted.) GTL argues that, since it has disclaimed Redwater's unproductive oil and gas assets, s. 14.06(4) of the BIA empowers it to walk away from those assets and the environmental liabilities associated with them and to deal solely with Redwater's producing oil and gas assets. Alternatively, GTL argues that, under the priority scheme in the *BIA*, the claims of Redwater's secured creditors must be satisfied ahead of Redwater's environmental liabilities. Relying on the doctrine of paramountcy, GTL says that Alberta's environmental legislation regulating the oil and gas industry is constitutionally inoperative to the extent that it authorizes the Regulator to interfere with this arrangement.

5 The chambers judge (2016 ABQB 278, 37 C.B.R. (6th) 88 (Alta. Q.B.)) and a majority of the Court of Appeal (2017 ABCA 124, 47 C.B.R. (6th) 171 (Alta. C.A.)) agreed with GTL. The Regulator's proposed use of its statutory powers to enforce Redwater's compliance with abandonment and reclamation obligations during bankruptcy was held to conflict with the *BIA* in two ways: (1) it imposed on GTL the obligations of a licensee in relation to the Redwater assets disclaimed by GTL, contrary to s. 14.06(4) of the BIA; and (2) it upended the priority scheme for the distribution of a bankrupt's assets established by the *BIA* by requiring that the "provable claims" of the Regulator, an unsecured creditor, be paid ahead of the claims of Redwater's secured creditors.

6 Martin J.A., as she then was, dissented. She would have allowed the Regulator's appeal on the basis that there was no conflict between Alberta's environmental legislation and the *BIA*. Martin J.A. was of the view that: (1) s. 14.06 of the BIA did not operate to relieve GTL of Redwater's obligations with respect to its licensed assets; and (2) the Regulator was not asserting any provable claims, so the priority scheme in the *BIA* was not upended.

7 For the reasons that follow, I would allow the appeal. Although my analysis differs from hers in some respects, I agree with Martin J.A. that the Regulator's use of its statutory powers does not create a conflict with the *BIA* so as to trigger the doctrine of federal paramountcy. Section 14.06(4) is concerned with the personal liability of trustees, and does not empower a trustee to walk away from the environmental liabilities of the estate it is administering. The Regulator is not asserting any claims provable in the bankruptcy, and the priority scheme in the *BIA* is not upended. Thus, no conflict is caused by GTL's status as a licensee under Alberta legislation. Alberta's regulatory regime can coexist with and apply alongside the *BIA*.

II. Background

A. Alberta's Regulatory Regime

8 The resolution of the constitutional questions and the ultimate outcome of this appeal depend on a proper understanding of the complex regulatory regime which governs Alberta's oil and gas industry. I will therefore describe that regime in considerable detail.

9 In order to exploit oil and gas resources in Alberta, a company needs three things: a property interest in the oil or gas, surface rights and a licence issued by the Regulator. In Alberta, mineral rights are typically reserved from ownership rights in land. About 90 percent of Alberta's mineral rights are held by the Crown on behalf of the public.

10 A company's property interest in the oil or gas it seeks to exploit typically takes the form of a mineral lease with the Crown (but occasionally with a private owner). The company also needs surface rights so it can access and occupy the physical land located above the oil and gas and place the equipment needed to pump, store and haul away the oil and gas. Surface rights may be obtained through a lease with the landowner, who is often a farmer or rancher (but is occasionally the Crown). Where a landowner does not voluntarily grant surface rights, Alberta law authorizes the Surface Rights Board to issue a right of entry order in favour of an "operator", that is, the person having the right to a mineral or the right to work it (Surface Rights Act, R.S.A. 2000, c. S-24, ss. 1(h) and 15).

11 Canadian courts characterize a mineral lease that allows a company to exploit oil and gas resources as a *profit à prendre*. It is not disputed that a *profit à prendre* is a form of real property interest held by the company (*Berkheiser v. Berkheiser*, [1957] S.C.R. 387 (S.C.C.)). A *profit à prendre* is fully assignable and has been defined as "a non-possessory interest in land, like an easement, which can be passed on from generation to generation, and remains with the land, regardless of changes in ownership" (F. L. Stewart, "How to Deal with a Fickle Friend? Alberta's Troubles with the Doctrine of Federal Paramountcy", in J. P. Sarra and B. Romaine, eds., *Annual Review of Insolvency Law 2017* (2018), 163 ("Stewart"), at p. 193). Solvent and insolvent companies alike will often hold *profits à prendre* in both producing and unproductive or spent wells. There are a variety of potential "working interest" arrangements whereby several parties can share an interest in oil and gas resources.

12 The third thing a company needs in order to access and exploit Alberta's oil and gas resources, and the one most germane to this appeal, is a licence issued by the Regulator. The *OGCA* prohibits any person without a licence from commencing to drill a well or undertaking any operations preparatory or incidental to the drilling of a well, and from commencing to construct or operate a facility (ss. 11(1) and 12(1)). The Pipeline Act, R.S.A. 2000, c. P-15, similarly prohibits the construction of pipelines without a licence (s. 6(1)). The *profit à prendre* in an oil and gas deposit may be bought and sold without regulatory approval. However, it is of little practical use on its own, as, without the licence associated with a well, the purchaser cannot "continue any drilling operations, any producing operations or any injecting operations" (OGCA, s. 11(1)), and, without the licence associated with a facility, the purchaser cannot "continue any construction or operation" (OGCA, s. 12(1)).

13 The three relevant licensed assets in the Alberta oil and gas industry are wells, facilities and pipelines. A "well" is defined, *inter alia*, as "an orifice in the ground completed or being drilled ... for the production of oil or gas" (OGCA, s. 1(1)(eee)). A "facility" is broadly defined and includes any building, structure, installation or equipment that is connected to or associated with the recovery, development, production, handling, processing, treatment or disposal of oil and gas resources (OGCA, s. 1(1)(w)). A "pipeline" is defined as "a pipe used to convey a substance or combination of substances", including associated installations (Pipeline Act, s. 1(1)(t)).

14 The licences a company needs to recover, process and transport oil and gas are issued by the Regulator. The Regulator is not an agent of the Crown. It is established as a corporation by s. 3(1) of the Responsible Energy Development Act, S.A. 2012, c. R-17.3 ("REDA"). It exercises a wide range of powers under the *OGCA* and the *Pipeline* Act. It also acts as the regulator in respect of energy resource activities under the *EPEA*, Alberta's more general environmental protection legislation (REDA, s. 2(2)(h)). The Regulator's mandate is set out in the *REDA* and includes "the efficient, safe, orderly and environmentally responsible development of energy resources in Alberta" (s. 2(1)(a)). The Regulator is funded almost entirely by the industry it regulates, and it collects its budget through an administration fee (Stewart, at p. 219; REDA, ss. 28 and 29; Alberta Energy Regulator Administration Fees Rules, Alta. Reg. 98/2013).

15 The Regulator has a wide discretion when it comes to granting licences to operate wells, facilities and pipelines. On receiving an application for a licence, the Regulator may grant the licence subject to any conditions, restrictions and stipulations, or it may refuse the licence (OGCA, s. 18(1); Pipeline Act, s. 9(1)). Licences to operate a well, facility or pipeline are granted subject to obligations that will one day arise to abandon the underlying asset and reclaim the land on which it is situated.

16 "Abandonment" refers to "the permanent dismantlement of a well or facility in the manner prescribed by the regulations or rules" made by the Regulator (OGCA, s. 1(1)(a)). Specifically, the abandonment of a well has been defined as "the process of sealing a hole which has been drilled for oil or gas, at the end of its useful life, to render it environmentally safe" (*Panamericana de Bienes y Servicios S.A. v. Northern Badger Oil & Gas Ltd.*, 1991 ABCA 181, 81 Alta. L.R. (2d) 45 ("*Northern Badger*"), at para. 2). The abandonment of a pipeline refers to its "permanent deactivation ... in the manner prescribed by the rules" (Pipeline Act, s. 1(1)(a)). "Reclamation" includes "the removal of equipment or buildings", "the decontamination of buildings ... land or water", and the "stabilization, contouring, maintenance, conditioning or reconstruction of the surface of the land" (EPEA, s. 1(ddd)). A further duty binding on those active in the Alberta oil and gas industry is remediation, which arises where a harmful or potentially harmful substance has been released into the environment (EPEA, ss. 112 to 122). As the extent of any remediation obligations that may be associated with Redwater assets is unclear, I will not refer to remediation separately from reclamation, unless otherwise noted. As has been done throughout this litigation, I will refer to abandonment and reclamation jointly as end-of-life obligations.

17 A licensee must abandon a well or facility when ordered to do so by the Regulator or when required by the rules or regulations. The Regulator may order abandonment when "the Regulator considers that it is necessary to do so in order to protect the public or the environment" (OGCA, s. 27(3)). Under the rules, a licensee is required to abandon a well or facility, *inter alia*, on the termination of the mineral lease, surface lease or right of entry, where the Regulator cancels or suspends the licence, or where the Regulator notifies the licensee that the well or facility may constitute an environmental or safety hazard (Oil and Gas Conservation Rules, Alta. Reg. 151/71, s. 3.012). Section 23 of the *Pipeline Act* requires licensees to abandon pipelines in similar situations. The duty to reclaim is established by s. 137 of the EPEA. This duty is binding on an "operator", a broader term which encompasses the holder of a licence issued by the Regulator (EPEA, s. 134(b)). Reclamation is governed by the procedural requirements set out in regulations (Conservation and Reclamation Regulation, Alta. Reg. 115/93).

18 The Licensee Liability Rating Program, which was, at the time of Redwater's insolvency, set out in *Directive 006: Licensee Liability Rating (LLR) Program and License Transfer Process* (March 12, 2013) ("Directive 006") is one means by which the Regulator seeks to ensure that end-of-life obligations will be satisfied by licensees rather than being offloaded onto the Alberta public. As part of this program, the Regulator assigns each company a Liability Management Rating ("LMR"), which is the ratio between the aggregate value attributed by the Regulator to a company's licensed assets and the aggregate liability attributed by the Regulator to the eventual cost of abandoning and reclaiming those assets. For the purpose of calculating the LMR, all the

licences held by a given company are treated as a package, without any segregation or parcelling of assets. A licensee's LMR is calculated on a monthly basis and, where it dips below the prescribed ratio (1.0 at the time of Redwater's insolvency), the licensee is required to pay a security deposit. The security deposit is added to the licensee's "deemed assets" and must bring its LMR back up to the ratio prescribed by the Regulator. If the required security deposit is not paid, the Regulator may cancel or suspend the company's licences (OGCA, s. 25). As an alternative to posting security, the licensee can perform end-of-life obligations or transfer licences (with approval) in order to bring its LMR back up to the prescribed level.

19 Licences can be transferred only with the Regulator's approval. The Regulator uses the Licensee Liability Rating Program to ensure that end-of-life obligations will not be negatively affected by licence transfers. Upon receipt of an application to transfer one or more licences, the Regulator assesses how the transfer, if approved, would affect the LMR of both the transferor and the transferee. At the time of Redwater's insolvency, if both the transferor and the transferee would have a post-transfer LMR equal to or exceeding 1.0, the Regulator would approve the transfer, absent other concerns. Following the chambers judge's decision in this case, the Regulator implemented changes to its policies, including the requirement that transferees have an LMR of 2.0 or higher immediately following any licence transfer: Alberta Energy Regulator, *Licensee Eligibility — Alberta Energy Regulator Measures to Limit Environmental Impacts Pending Regulatory Changes to Address the Redwater Decision*, June 20, 2016 (online). For the purposes of this appeal, I will be referring to the regulatory regime as it existed at the time of Redwater's insolvency.

20 As discussed in greater detail below, if either the transferor or the transferee would have a post-transfer LMR below 1.0, the Regulator would refuse to approve the licence transfer. In such a situation, the Regulator would insist on certain remedial steps being taken to ensure that neither LMR would drop below 1.0. Although Directive 006, as it was in the 2013 version, required both the transferee and transferor to have a post transfer LMR of at least 1.0, during this litigation, the Regulator stated that, when licensees are in receivership or bankruptcy, its working rule is to approve transfers as long as they do not cause a deterioration in the transferor's LMR, even where its LMR will remain below 1.0 following the transfer. The explanation for this working rule is that it helps to facilitate purchases. The Regulator's position is that the Licensee Liability Rating Program continues to apply to the transfer of licences as part of insolvency proceedings.

21 The *OGCA*, the *Pipeline Act* and the *EPEA* all contemplate that a licensee's regulatory obligations will continue to be fulfilled when it is subject to insolvency proceedings. The *EPEA* achieves this by including the trustee of a licensee in the definition of "operator" for the purposes of the duty to reclaim (s. 134(b)(vi)). The *EPEA* also specifically provides that an order to perform reclamation work (known as an "environmental protection order") may be issued to a trustee (ss. 140 and 142(1)(a)(ii)). The *EPEA* imposes responsibility for carrying out the terms of an environmental protection order on the person to whom the order is directed (ss. 240 and 245). However, absent gross negligence or wilful misconduct, a trustee's liability in relation to such an order is expressly limited to the value of the assets in the bankrupt estate (s. 240(3)). The *OGCA* and the *Pipeline Act* take a more generic approach to applying the various obligations of licensees to trustees in the insolvency context: they simply include trustees in the definition of "licensee" (OGCA, s. 1(1)(cc); Pipeline Act, s. 1(1)(n)). As a result, every power which these Acts give the Regulator against a licensee can theoretically also be exercised against a trustee.

22 Despite this, Alberta's regulatory regime does contemplate the possibility that some of a licensee's end-of-life obligations will remain unfulfilled when the insolvency process has run its course. The Regulator may designate wells, facilities, and their sites as "orphans" (OGCA, s. 70(2)(a)). A pipeline is defined as a "facility" for the purposes of the orphan regime (OGCA, s. 68(d)). Directive 006 stated that "a well, facility, or pipeline in the LLR program is eligible to be declared an orphan where the licensee of that licence becomes insolvent or defunct" (s. 7.1). An "orphan fund" has been established for the purpose of paying for, *inter alia*, the abandonment and reclamation of orphans (OGCA, s. 70(1)). The orphan fund is financed by an annual industry-wide levy paid by licensees of wells, facilities and unreclaimed sites (s. 73(1)). The amount of the levy is prescribed by the Regulator based on the estimated cost of abandoning and reclaiming orphans in a given fiscal year (s. 73(2)).

23 The Regulator has delegated its statutory authority to abandon and reclaim orphans to the OWA (Orphan Fund Delegated Administration Regulation, Alta. Reg. 45/2001), a non-profit organization overseen by an independent board of directors. It is funded almost entirely through the industry-wide levy described above, 100 percent of which is remitted to it by the Regulator. The OWA has no power to seek reimbursement of its costs. However, once it has completed its environmental work, it may be

reimbursed up to the value of any security deposit held by the Regulator to the credit of the licensee of the orphans. In recent years, the number of orphans in Alberta has increased rapidly. For example, the number of new orphan wells increased from 80 in the 2013-14 years to 591 in the 2014-15 years.

24 At issue in this appeal is the applicability during bankruptcy of two powers conferred on the Regulator by the provincial legislation. Both are designed to ensure that licensees satisfy their end-of-life obligations.

25 The first power at issue in this appeal is the Regulator's power to order a licensee to abandon licensed assets, which is accompanied by statutory powers for the enforcement of such orders. Where a well or facility has not been abandoned in accordance with a direction of the Regulator or the rules or regulations, the Regulator may authorize any person to abandon the well or facility or may do so itself (OGCA, s. 28). Where the Regulator or the person it has designated performs the abandonment, the costs of doing so constitute a debt payable to the Regulator. An order of the Regulator showing these costs may be filed with and entered as a judgment of the Alberta Court of Queen's Bench and then enforced according to the ordinary procedure for enforcement of judgments of that court (OGCA, s. 30(6)). A similar scheme applies with respect to pipelines (Pipeline Act, ss. 23 to 26).

26 A licensee that contravenes or fails to comply with an order of the Regulator, or that has an outstanding debt to the Regulator in respect of abandonment or reclamation costs, is subject to a number of potential enforcement measures. The Regulator may suspend operations, refuse to consider licence applications or licence transfer applications (OGCA, s. 106(3)(a), (b) and (c)), or require the payment of security deposits, generally or as a condition of granting any further licences, approvals or transfers (OGCA, s. 106(3)(d) and (e)). Where a licensee contravenes the Act, regulations or rules, any order or direction of the Regulator, or any condition of a licence, the Regulator may prosecute the licensee for a regulatory offence and a fine may be imposed as a penalty, although the licensee can raise a due diligence defence (OGCA, ss. 108 and 110). A similar scheme applies with respect to pipelines (Pipeline Act, ss. 51 to 54) and the *EPEA* contains similar debt-creating provisions with respect to environmental protection orders. The *EPEA* also provides for the prosecution of regulatory offences in cases of non-compliance, with an available due diligence defence. However, as noted, a trustee's liability in relation to environmental protection orders is capped at estate assets, unless the trustee is guilty of gross negligence or wilful misconduct (EPEA, ss. 227 to 230, 240 and 245).

27 The second power at issue in this appeal is the Regulator's power to impose conditions on a licensee's transfer of its licence(s). As when it initially grants a licence, the Regulator has broad powers to consent to the transfer of a licence subject to any conditions, restrictions and stipulations or to reject the transfer (OGCA, s. 24(2)). Under Directive 006 and its 2016 replacement, the Regulator can reject a transfer even where both parties would have the required LMR after the transfer or where a security deposit is available to be posted in compliance with LMR requirements. In particular, the Regulator may determine that it is not in the public interest to approve the licence transfer based on the compliance history of one or both parties or their directors, officers or security holders, or based on the risk posed by the transfer to the orphan fund.

28 Where a proposed transaction would cause the transferor's LMR to deteriorate below 1.0 (or simply to deteriorate, in the case of an insolvent transferor), the Regulator insists that one of the following conditions be met before it will approve the transaction: (i) that the transferor perform abandonment, reclamation, or both, thus reducing its deemed liabilities, or (ii) that the transferor post a security deposit, thus increasing its deemed assets. Alternatively, the transaction may be structured to avoid any deterioration of the transferor's LMR by "bundling" the licences for spent wells with the licences for producing wells. A transaction in which the licenses for spent wells are retained while the licences for producing wells are transferred will almost always cause a considerable deterioration in a company's LMR.

29 During this appeal, there was significant discussion of other regulatory regimes which Alberta *could* have adopted to prevent environmental costs associated with the oil and gas industry from being offloaded onto the public. What Alberta *has* chosen is a licensing regime which makes such costs an inherent part of the value of the licensed assets. This regime has the advantage of aligning with the polluter-pays principle, a well-recognized tenet of Canadian environmental law. This principle assigns polluters the responsibility for remedying environmental damage for which they are responsible, thereby incentivizing companies to pay attention to the environment in the course of their economic activities (*Imperial Oil Ltd. v. v. Quebec (Minister of the Environment)*, 2003 SCC 58, [2003] 2 S.C.R. 624 (S.C.C.) , at para. 24). The Licensee Liability Rating Program essentially

requires licensees to apply the value derived from oil and gas assets during the productive portions of the life cycle of the assets to the inevitable cost of abandoning those assets and reclaiming their sites at the end of those life cycles.

30 Ultimately, it is not the role of this Court to decide the best regulatory approach to the oil and gas industry. What is not in dispute is that, in adopting its current regulatory regime, Alberta has acted within its constitutional authority over property and civil rights in the province and over the "development, conservation and management of non-renewable natural resources ... in the province" (Constitution Act, 1867, ss. 92(13) and 92A(1)(c)). Alberta has devised a complex regulatory apparatus to address important policy questions concerning when, by whom and in what manner the inevitable environmental costs associated with oil and gas extraction are to be paid. Its solution is a licensing regime that depresses the value of key industry assets to reflect environmental costs, backstopped by a levy on industry in the form of the orphan fund. Alberta intended that apparatus to continue to operate when an oil and gas company is subject to insolvency proceedings.

31 However, the insolvency of an oil and gas company licensed to operate in Alberta also engages the *BIA*. The *BIA* is federal legislation that governs the administration of a bankrupt's estate and the orderly and equitable distribution of property among its creditors. It is validly enacted pursuant to Parliament's constitutional authority over bankruptcy and insolvency (Constitution Act, 1867, s. 91(21)). Just as Alberta's regulatory regime reflects its considered choice about how to address the important policy questions raised by the environmental risks of oil and gas extraction, the *BIA* reflects Parliament's considered choice about how to balance important policy objectives when a bankrupt's assets are, by definition, insufficient to meet all of its various obligations. To the extent that there is an operational conflict between the Alberta regulatory regime and the *BIA*, or that the Alberta regulatory regime frustrates the purpose of the *BIA*, the doctrine of paramountcy dictates that the *BIA* must prevail.

B. The Relevant Provisions of the BIA

32 Here, I simply wish to note the sections of the *BIA* at issue in this appeal. These sections will determine whether the doctrine of paramountcy applies. I will discuss the purposes of the *BIA* and the various issues raised by s. 14.06 in greater detail below.

33 The central concept of the *BIA* is that of a "claim provable in bankruptcy". Several provisions of the *BIA* form the basis for delineating the scope of provable claims. The first is the definition provided in s. 2:

> ***claim provable in bankruptcy, provable claim*** or ***claim provable*** includes any claim or liability provable in proceedings under this Act by a creditor...

34 "Creditor" is defined in s. 2 as "a person having a claim provable as a claim under this Act".

35 The definition of "claim provable" is completed by s. 121(1):

> All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

36 A claim may be provable in a bankruptcy proceeding even if it is a contingent claim. A "contingent claim is 'a claim which may or may not ever ripen into a debt, according as some future event does or does not happen'" (*Peters v. Remington*, 2004 ABCA 5, 49 C.B.R. (4th) 273 (Alta. C.A.), at para. 23, quoting *Gardner v. Newton* (1916), 29 D.L.R. 276 (Man. K.B.) , at p. 281). Sections 121(2) and 135(1.1) provide guidance on when a contingent claim will be a provable claim:

> **121 (2)** The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 135.
>
> . . . . .
>
> **135 (1.1)** The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

37 In *AbitibiBowater Inc., Re*, 2012 SCC 67, [2012] 3 S.C.R. 443 (S.C.C.) ("*Abitibi*"), at para. 26, this Court interpreted the foregoing provisions of the *BIA* and articulated a three-part test for determining when an environmental obligation imposed by a regulator will be a provable claim for the purposes of the BIA and the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 ("CCAA"):

> First, there must be a debt, a liability or an obligation to a *creditor*. Second, the debt, liability or obligation must be incurred *before the debtor becomes bankrupt*. Third, it must be possible to attach a *monetary value* to the debt, liability or obligation. [Emphasis in original.]

38 I will address the *Abitibi* test in greater detail below.

39 Once bankruptcy has been declared, creditors of the bankrupt must participate in one collective bankruptcy proceeding if they wish to enforce their provable claims. Section 69.3(1) of the BIA thus provides for an automatic stay of enforcement of provable claims outside the bankruptcy proceeding, effective as of the first day of bankruptcy.

40 The *BIA* establishes a comprehensive priority scheme for the satisfaction of the provable claims asserted against the bankrupt in the collective proceeding. Section 141 sets out the general rule, which is that all creditors rank equally and share rateably in the bankrupt's assets. However, the rule set out in s. 141 applies "[s]ubject to [the *BIA*]". Section 136(1) lists the claims of preferred creditors and the order of priority for their payment. It also states that this order of priority is "[s]ubject to the rights of secured creditors". Under s. 69.3(2), the stay of proceedings does not prevent secured creditors from realizing their security interest. The *BIA* therefore sets out a priority scheme for paying claims provable in bankruptcy, with secured creditors being paid first, preferred creditors second and unsecured creditors last (see *Alberta (Attorney General) v. Moloney*, 2015 SCC 51, [2015] 3 S.C.R. 327 (S.C.C.) , at paras. 32-35).

41 Essential to this appeal is s. 14.06 of the BIA, which deals with various environmental matters in the bankruptcy context. I will now reproduce s. 14.06(2) and s. 14.06(4), the two portions of the s. 14.06 scheme that are directly implicated in this appeal. The balance of s. 14.06 can be found in the appendix at the conclusion of these reasons.

42 Section 14.06(2) reads as follows:

> **(2)** Notwithstanding anything in any federal or provincial law, a trustee is not personally liable in that position for any environmental condition that arose or environmental damage that occurred
>
> (a) before the trustee's appointment; or
>
> (b) after the trustee's appointment unless it is established that the condition arose or the damage occurred as a result of the trustee's gross negligence or wilful misconduct or, in the Province of Quebec, the trustee's gross or intentional fault.

43 Section 14.06(4) reads as follows:

> **(4)** Notwithstanding anything in any federal or provincial law but subject to subsection (2), where an order is made which has the effect of requiring a trustee to remedy any environmental condition or environmental damage affecting property involved in a bankruptcy, proposal or receivership, the trustee is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
>
> (a) if, within such time as is specified in the order, within ten days after the order is made if no time is so specified, within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, or during the period of the stay referred to in paragraph (b), the trustee
>
> (i) complies with the order, or

(ii) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property, or any right in any immovable, affected by the condition or damage;

(b) during the period of a stay of the order granted, on application made within the time specified in the order referred to in paragraph (a), within ten days after the order is made or within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, by

(i) the court or body having jurisdiction under the law pursuant to which the order was made to enable the trustee to contest the order, or

(ii) the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(c) if the trustee had, before the order was made, abandoned or renounced or been divested of any interest in any real property, or any right in any immovable, affected by the condition or damage.

44 As I will discuss, a main point of contention between the parties is the very different interpretations they ascribe to s. 14.06(4) of the BIA. I note that s. 14.06(4)(a)(ii), which is relied upon by GTL, refers to a trustee who "abandons, disposes of or otherwise releases any interest in any real property". The word "disclaim" is used in these reasons, as it has been throughout this litigation, as a shorthand for these terms.

45 I turn now to a brief discussion of the events of the Redwater bankruptcy.

C. The Events of the Redwater Bankruptcy

46 Redwater was a publicly traded oil and gas company. It was first granted licences by the Regulator in 2009. On January 31 and August 19, 2013, ATB advanced funds to Redwater and, in return, was granted a security interest in Redwater's present and after-acquired property. ATB lent funds to Redwater with full knowledge of the end-of-life obligations associated with its assets. In mid-2014, Redwater began to experience financial difficulties. Upon application by ATB, GTL was appointed receiver for Redwater on May 12, 2015. At that time, Redwater owed ATB approximately $5.1 million.

47 Upon being advised of the receivership, the Regulator sent GTL a letter dated May 14, 2015, setting out its position. The Regulator noted that the *OGCA* and the *Pipeline* Act included both receivers and trustees in the definition of "licensee". The Regulator stated that it was not a creditor of Redwater and that it was not asserting a "provable claim in the receivership". Accordingly, notwithstanding the receivership, Redwater remained obligated to comply with all regulatory requirements, including abandonment obligations for all licensed assets. The Regulator stated that GTL was legally obligated to fulfill these obligations prior to distributing any funds or finalizing any proposal to creditors. It warned that it would not approve the transfer of any of Redwater's licences unless it was satisfied that both the transferee and the transferor would be in a position to fulfill all regulatory obligations. It requested confirmation that GTL had taken possession of Redwater's licensed properties and that it was taking steps to comply with all of Redwater's regulatory obligations.

48 At the time it ran into financial difficulties, Redwater was licensed by the Regulator for 84 wells, 7 facilities and 36 pipelines, all in central Alberta. The vast majority of its assets were these oil and gas assets. At the time GTL was appointed receiver, 19 of the wells and facilities were producing and the remaining 72 were inactive or spent. There were working interest participants in several of the wells and facilities. Redwater's LMR did not drop below 1.0 until after it went into receivership, so it never paid any security deposits to the Regulator.

49 By September 2015, Redwater's LMR had dropped to 0.93. The net value of its deemed assets and its deemed liabilities was negative $553,000. The 19 producing wells and facilities for which Redwater was the licensee would have had an LMR of 2.85 and a deemed net value of $4.152 million. The remaining 72 wells and facilities for which Redwater was the licensee would have had an LMR of 0.30 and a deemed net value of negative $4.705 million. Given that Redwater was in receivership, the

Regulator's position was that it would approve the transfer of Redwater's licences only if the transfer did not cause a deterioration in its LMR.

50 In its Second Report to the Alberta Court of Queen's Bench dated October 3, 2015, GTL explained why it had concluded that it could not meet the Regulator's requirements. GTL had concluded that the cost of the end-of-life obligations for the spent wells would likely exceed the sale proceeds for the productive wells. It viewed a sale of the non-producing wells — even if bundled with producing wells — as unlikely. If such a sale were possible, the purchase price would be reduced by the end-of-life obligations, negating the benefit to the estate. Based on this assessment, by letter dated July 3, 2015, GTL informed the Regulator that it was taking possession and control only of Redwater's 17 most productive wells (including a leaking well that was subsequently abandoned), 3 associated facilities and 12 associated pipelines ("Retained Assets"), and that, pursuant to para. 3(a) of the Receivership Order, it was not taking possession or control of any of Redwater's other licensed assets ("Renounced Assets"). GTL's position was that it had no obligation to fulfill any regulatory requirements associated with the Renounced Assets.

51 In response, on July 15, 2015, the Regulator issued orders under the *OGCA* and the *Pipeline* Act requiring Redwater to suspend and abandon the Renounced Assets ("Abandonment Orders"). The orders required abandonment to be carried out immediately where there were no other working interest participants and, by September 18, 2015, where there were other working interest participants. The Regulator stated that it considered the Renounced Assets an environmental and safety hazard and that s. 3.012(d) of the Oil and Gas Conservation Rules required a licensee to abandon wells or facilities so considered. In issuing the Abandonment Orders, the Regulator also relied on ss. 27 to 30 of the OGCA and ss. 23 to 26 of the Pipeline Act. If the Abandonment Orders were not complied with, the Regulator threatened to abandon the assets itself and to sanction Redwater through the use of s. 106 of the OGCA. The Regulator further stated that, once abandonment had taken place, the surface would need to be reclaimed and reclamation certificates obtained in accordance with s. 137 of the EPEA.

52 On September 22, 2015, the Regulator and the OWA filed an application for a declaration that GTL's renunciation of the Renounced Assets was void, an order requiring GTL to comply with the Abandonment Orders, and an order requiring GTL to "fulfill the statutory obligations as licensee in relation to the abandonment, reclamation and remediation" of all of Redwater's licensed properties (A.R., vol. II, at p. 41). The Regulator did not seek to hold GTL liable for these obligations beyond the assets remaining in the Redwater estate. GTL brought a cross-application on October 5, 2015, seeking approval to pursue a sales process excluding the Renounced Assets. GTL sought a court order directing that the Regulator could not prevent the transfer of the licences associated with the Retained Assets on the basis of, *inter alia*, the LMR requirements, failure to comply with the Abandonment Orders, refusal to take possession of the Renounced Assets or any outstanding debts owed by Redwater to the Regulator. GTL did not seek to foreclose the possibility that the Regulator might have some other valid reason to reject a proposed transfer.

53 A bankruptcy order was issued for Redwater on October 28, 2015, and GTL was appointed as trustee. GTL sent another letter to the Regulator on November 2, 2015, this time invoking s. 14.06(4)(a)(ii) of the BIA in relation to the Renounced Assets. The Abandonment Orders remain outstanding.

D. Judicial History

(1) Court of Queen's Bench of Alberta

54 The chambers judge concluded that s. 14.06 of the BIA was designed to permit trustees to disclaim property where this was a rational economic decision in light of the environmental condition affecting the property. Personal liability of the trustee was not a condition precedent to the power to disclaim. The chambers judge accordingly found an operational conflict between s. 14.06 of the BIA and the definition of "licensee" in the *OGCA* and the *Pipeline* Act. Under s. 14.06 of the *BIA*, GTL could renounce assets and not be responsible for the associated environmental obligations. However, under the *OGCA* and the *Pipeline* Act, GTL could not renounce licensed assets because the definition of "licensee" included receivers and trustees, so GTL remained liable for environmental obligations.

55 Applying the test from *Abitibi*, the chambers judge concluded that, although in a "technical sense" it was not sufficiently certain that the Regulator or the OWA would carry out the Abandonment Orders and assert a monetary claim to have its costs reimbursed, the situation met what was intended by the Court in *Abitibi* because the Abandonment Orders were "intrinsically financial" (para. 173). Forcing GTL, as a "licensee", to comply with the Abandonment Orders would therefore frustrate the *BIA*'s overall purpose of equitable distribution of the bankrupt's assets, as the Regulator's claim would be given a super priority to which it was not entitled, ahead of the claims of secured creditors. It would also frustrate the purpose of s. 14.06, by which Parliament had legislated as to environmental claims in bankruptcy and had specifically chosen not to give them a super priority. The conditions imposed by the Regulator on transfers of the licences for the Retained Assets further frustrated s. 14.06 by including the Renounced Assets in the calculation for determining the approval of a sale.

56 The chambers judge approved the sale procedure proposed by GTL. He declared that the *OGCA* and the *Pipeline* Act were inoperative to the extent that they conflicted with the *BIA* by deeming GTL to be the "licensee" of the Renounced Assets; that GTL was entitled to disclaim the Renounced Assets pursuant to s. 14.06(4)(a)(ii) and (c), and was not subject to any obligations in relation to those assets; that the Abandonment Orders were inoperative to the extent that they required GTL to comply or to provide security deposits; and that Directive 006 was inoperative to the extent it conflicted with s. 14.06 of the BIA. Lastly, he declared that the Regulator, in exercising its discretion to approve a transfer of the licences for the Retained Assets, could not consider the Renounced Assets for the purpose of calculating Redwater's LMR before or after the transfer, nor could it consider any other issue involving the Renounced Assets.

(2) Court of Appeal of Alberta

(a) Majority Reasons

57 Slatter J.A., for the majority, dismissed the appeals. He stated that the constitutional issues in the appeals were complementary to the primary issue, which was the interpretation of the BIA. Section 14.06 did not exempt environmental claims from the general bankruptcy regime, other than the super priority in s. 14.06(7), which would rarely, if ever, have any application to oil and gas wells. Section 14.06(4) did not "limit the power of the trustee to renounce ... properties to those circumstances where it might be exposed to personal liability" (para. 68). Additionally, the word "order" in s. 14.06(4) had to be given a wide meaning.

58 Slatter J.A. identified the essential issue as "whether the environmental obligations of Redwater meet the test for a provable claim" (para. 73). He agreed with the chambers judge that the third branch of the *Abitibi* test was met, but concluded that that test had been met "in both a technical and substantive way" (para. 76). The Regulator's policies essentially stripped away from the bankrupt estate enough value to meet environmental obligations. Requiring the depositing of security, or diverting value from the bankrupt estate, clearly met the standard of "certainty". The Regulator's policies required that the full value of the bankrupt's assets be applied first to environmental liabilities, creating a super priority for environmental claims. Slatter J.A. concluded that, "[n]otwithstanding their intended effect as conditions of licensing, the Regulator's policies [had] a direct effect on property, priorities, and the Trustee's right to renounce assets, all of which [were] governed by the *BIA*" (para. 86).

59 In terms of constitutional analysis, Slatter J.A. concluded that the role of GTL as a "licensee" under the *OGCA* and the *Pipeline* Act was "in operational conflict with the provisions of the *BIA*" that exempted trustees from personal liability, allowed them to disclaim assets and established the priority of environmental claims (para. 89). It also frustrated the *BIA*'s purpose of "managing the winding up of insolvent corporations and settling the priority of claims against them" (para. 89). As such, the Regulator could not "insist that the Trustee devote substantial parts of the bankrupt estate in satisfaction of the environmental claims in priority to the claims of the secured creditor" (para. 91).

(b) Dissenting Reasons

60 Martin J.A. dissented. In contrast to the majority, she stressed the constitutional dimensions of the case, in particular the need for co-operative federalism in the area of the environment, and noted that the doctrine of paramountcy should be applied with restraint. She concluded that the Regulator was not asserting a provable claim within the meaning of the *Abitibi* test. It was

not enough for a regulatory order to be "intrinsically financial" for it to be a claim provable in bankruptcy (para. 185, quoting the chambers judge's reasons, at para. 173). There was not sufficient certainty that the ordered abandonment work would be done, either by the Regulator or by the OWA, and there was "no certainty at all that a claim for reimbursement would be made" (para. 184). Martin J.A. was also of the view that the Regulator was not a creditor of Redwater — or, if it was a creditor in issuing the Abandonment Orders, it was at least not one in enforcing the conditions for the transfer of licences. The Regulator had to be able to maintain control over the transfer of licences during a bankruptcy, and there was no reason why such regulatory requirements could not coexist with the distribution of the bankrupt's estate.

61 With regard to s. 14.06, Martin J.A. accepted the Regulator's argument that s. 14.06(4) allowed a trustee to renounce real property in order to avoid personal liability but did not prevent the assets of the bankrupt estate from being used to comply with environmental obligations. However, she went beyond this. In her view, s. 14.06(4) to (8) were enacted together as a statutory compromise. Martin J.A. concluded that a trustee's power to disclaim assets under s. 14.06 simply had no applicability to Alberta's regulatory regime. The ability to renounce under s. 14.06(4) had to be read in conjunction with the other half of the compromise — the Crown's super priority over the debtor's real property established by s. 14.06(7). Licence conditions were not the sort of "order" contemplated by s. 14.06(4), nor were licences the kind of "real property" contemplated by that provision. The balance struck by s. 14.06 was not effective when there was no "real property of the debtor" in which the Crown could take a super priority (para. 210).

62 As there was no entitlement under the *BIA* to renounce the end-of-life obligations imposed by Alberta's regulatory regime, there was no operational conflict in enforcing those obligations under provincial law. Nor was there any frustration of purpose. The Regulator was not asserting any claims provable in bankruptcy: "The continued application of [Alberta's] regulatory regime following bankruptcy did not determine or reorder priorities among creditors, but rather value[d] accurately the assets available for distribution" (para. 240).

III. Analysis

A. The Doctrine of Paramountcy

63 As I have explained, Alberta legislation grants the Regulator wide-ranging powers to ensure that companies that have been granted licences to operate in the Alberta oil and gas industry will safely and properly abandon oil wells, facilities and pipelines at the end of their productive lives and will reclaim their sites. GTL seeks to avoid being subject to two of those powers: the power to order Redwater to abandon the Renounced Assets and the power to refuse to allow a transfer of the licences for the Retained Assets due to unmet LMR requirements. There is no doubt that these are valid regulatory powers granted to the Regulator by valid Alberta legislation. GTL seeks to avoid their application during bankruptcy by virtue of the doctrine of federal paramountcy, which dictates that the Alberta legislation empowering the Regulator to use the powers in dispute in this appeal will be inoperative to the extent that its use of these powers during bankruptcy conflicts with the *BIA*.

64 The issues in this appeal arise from what has been termed the "untidy intersection" of provincial environmental legislation and federal insolvency legislation (*Nortel Networks Corp., Re*, 2012 ONSC 1213, 88 C.B.R. (5th) 111 (Ont. S.C.J. [Commercial List]), at para. 8). Paramountcy issues frequently arise in the insolvency context. Given the procedural nature of the *BIA*, the bankruptcy regime relies heavily on the continued operation of provincial laws. However, s. 72(1) of the BIA confirms that, where there is a genuine conflict between provincial laws concerning property and civil rights and federal bankruptcy legislation, the *BIA* prevails (see Moloney, at para. 40). In other words, bankruptcy is carved out from property and civil rights but remains conceptually part of it. Valid provincial legislation of general application continues to apply in bankruptcy until Parliament legislates pursuant to its exclusive jurisdiction in relation to bankruptcy and insolvency. At that point, 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 (S.C.C.) , 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 (S.C.C.), at para. 18, quoting *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161 (S.C.C.) , 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(S.C.C.) , 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 (S.C.C.) , 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 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.

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.

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.

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 estate. Thus, as long as a trustee is protected from personal liability, no conflict arises from its status as a "licensee" or from the fact that the bankrupt estate remains responsible under provincial law for the ongoing environmental obligations associated with "disclaimed" assets.

70 The second conflict proposed by GTL is that, even if s. 14.06(4) is only concerned with a trustee's personal liability, the Regulator's use of its statutory powers effectively reorders the priorities in bankruptcy established by the *BIA*. Such reordering is said to be caused by the fact that the Regulator requires the expenditure of estate assets to comply with the Abandonment Orders and to discharge or secure the environmental liabilities associated with the Renounced Assets before it will approve a transfer of the licences for the Retained Assets (in keeping with the LMR requirements). These end-of-life obligations are said by GTL to be unsecured claims held by the Regulator, which cannot, under the *BIA*, be satisfied in preference over the claims of Redwater's secured creditors. In response, the Regulator says that, on the proper application of the *Abitibi* test, these environmental regulatory obligations are not provable claims in bankruptcy. Accordingly, says the Regulator, the provincial laws requiring the Redwater estate to satisfy these obligations prior to the distribution of its assets to secured creditors do not conflict with the priority scheme in the *BIA*.

71 I will consider each alleged conflict in turn.

B. Is There a Conflict Between the Alberta Regulatory Scheme and Section 14.06 of the BIA?

72 As a statutory scheme, s. 14.06 of the BIA raises numerous interpretive issues. As noted by Martin J.A., the only matter concerning s. 14.06 on which all the parties to this litigation can agree is that it "is not a model of clarity" (C.A. reasons, at para. 201). Given the confusion caused by attempts to interpret s. 14.06 as a coherent scheme during this litigation, Parliament may very well wish to re-examine s. 14.06 during its next review of the *BIA*.

73 At its core, this appeal raises the issue of whether there is a conflict between specific Alberta legislation and the *BIA*. GTL submits that there is such a conflict. It argues that, because it "disclaimed" the Renounced Assets under s. 14.06(4) of the BIA, it should cease to have any responsibilities, obligations or liability with respect to them. And yet, it notes, as a "licensee" under the *OGCA* and the *Pipeline* Act, it remains responsible for abandoning the Renounced Assets. Furthermore, those assets continue to be included in the calculation of Redwater's LMR. GTL suggests an additional conflict with s. 14.06(2) of the BIA based on its possible exposure, as a "licensee", to personal liability for the costs of abandoning the Renounced Assets.

74 I have concluded that there is no conflict. Various arguments were advanced during this appeal concerning the disparate elements of the s. 14.06 scheme. However, the provision upon which GTL in fact relies in arguing that it is entitled to avoid its responsibilities as a "licensee" under the Alberta legislation is s. 14.06(4). As I have noted, GTL and the Regulator propose very different interpretations of s. 14.06(4). However, s. 14.06(4) is clear and unambiguous when read on its own: where it is invoked by a trustee, the result is that "the trustee is not personally liable" for failure to comply with certain environmental orders or for the costs incurred by any person in carrying out the terms of such orders. The provision says nothing about the liability of the "bankrupt" or the "estate" — distinct concepts referenced many times throughout the BIA. Section 14.06(4), on its own wording, does not support the interpretation urged upon this Court by GTL.

75 In my view, s. 14.06(4) sets out the result of a trustee's "disclaimer" of real property when there is an order to remedy any environmental condition or damage affecting that property. Regardless of whether "disclaimer" is understood as a common law power or as a power deriving from some other statutory source, the result of a trustee's "disclaimer" of real property where an environmental order has been made in relation to that property is that the trustee is protected from personal liability, while the ongoing liability of the bankrupt estate is unaffected. The interpretation of s. 14.06(4) as being concerned with the personal liability of the trustee and not with the liability of the bankrupt estate is supported not only by the plain language of the section, but also by the Hansard evidence, a previous decision of this Court and the French version of the section. Furthermore, not only is the plain meaning of the words "personally liable" clear, but the same concept is also found in both s. 14.06(1.2) and s. 14.06(2), which specifically state that the trustee is not personally liable. In particular, in my view, it is impossible to coherently read s. 14.06(2) as referring to personal liability and yet read s. 14.06(4) as somehow referring to the liability of the bankrupt estate.

76 Given that s. 14.06(4) dictates that "disclaimer" only protects trustees from personal liability, then, even assuming that GTL successfully "disclaimed" in this case, no operational conflict or frustration of purpose results from the fact that the Regulator requires GTL, as a "licensee", to expend estate assets on abandoning the Renounced Assets. Furthermore, no conflict is caused by continuing to include the Renounced Assets in the calculation of Redwater's LMR. Finally, given the restraint with which the doctrine of paramountcy must be applied, and given that the Regulator has not attempted to hold GTL personally liable as a "licensee" for the costs of abandonment, no conflict with s. 14.06(2) or s. 14.06(4) is caused by the mere theoretical possibility of personal liability under the OGCA or the Pipeline Act.

77 In what follows, I will begin by interpreting s. 14.06(4) and explaining why, based on its plain wording and other relevant considerations, the provision is concerned solely with the personal liability of the trustee, and not with the liability of the bankrupt estate. I will then explain how, despite their superficial similarity, s. 14.06(4) and s. 14.06(2) have different rationales, and I will demonstrate that, on a proper understanding of the scheme crafted by Parliament, s. 14.06(4) does not affect the liability of the bankrupt estate. To conclude, I will demonstrate that there is no operational conflict or frustration of

purpose between the Alberta legislation and s. 14.06 of the BIA in this case, with particular reference to the question of GTL's protection from personal liability.

(1) The Correct Interpretation of Section 14.06(4)

(a) Section 14.06(4) Is Concerned With the Personal Liability of Trustees

78 I have concluded that s. 14.06(4) is concerned with the personal liability of trustees, and not with the liability of the bankrupt estate. I emphasize here the well-established principle that, "[w]hen a federal statute can be properly interpreted so as not to interfere with a provincial statute, such an interpretation is to be applied in preference to another applicable construction which would bring about a conflict between the two statutes" (*Canadian Western Bank*, at para. 75, quoting *Canada (Attorney General) v. Law Society (British Columbia)*, [1982] 2 S.C.R. 307 (S.C.C.), at p. 356).

79 Section 14.06(4) says nothing about the "bankrupt estate" avoiding the applicability of valid provincial law. In drafting s. 14.06(4), Parliament could easily have referred to the liability of the bankrupt estate. Parliament chose instead to refer simply to the personal liability of a trustee. Notably, s. 14.06(7) and s. 14.06(8) both refer to a "debtor in a bankruptcy". Parliament's choice in this regard cannot be ignored. I agree with Martin J.A. that there is no basis on which to read the words "the trustee is not personally liable" in s. 14.06(4) as encompassing the liability of the bankrupt estate. As noted by Martin J.A., it is apparent from the express language chosen by Parliament that s. 14.06(4) was motivated by and aimed at concerns about the protection of trustees, not the protection of the full value of the estate for creditors. Nothing in the wording of s. 14.06(4) suggests that it was intended to extend to estate liability.

80 The Hansard evidence leads to the same conclusion. Jacques Hains, Director, Corporate Law Policy Directorate, Department of Industry Canada, noted the following during the 1996 debates preceding the enactment of s. 14.06(4) in 1997:

> The aim is to provide a better definition of the liability of insolvency professionals and practitioners in order to encourage them to accept mandates where there may be problems related to the environment. It is hoped that this will reduce the number of abandoned sites both for the benefit of the environment and the safeguard of businesses and jobs.
>
> (Standing Committee on Industry, *Evidence*, No. 16, 2nd Sess., 35th Parl., June 11, 1996, at 15:49-15:55, as cited in C.A. reasons, at para. 197.)

Several months later, Mr. Hains stated:

> What Parliament tried to do in 1992 was to provide a relief to insolvency practitioners ... because they were at risk when they accepted a mandate to liquidate an insolvent business. Under environmental laws, therefore, they could have been subject to personal liability to clean up the environment. I am speaking of personal liability here, meaning "out of their own pockets."
>
> (*Proceedings of the Standing Committee on Banking, Trade and Commerce*, No. 13, 2nd Sess., 35th Parl., November 4, 1996, at p. 15)

Mr. Hains proceeded to explain how the 1997 amendments were intended to improve on the 1992 reforms to the *BIA* that had included the original version of s. 14.06(2) (as discussed further below), but he gave no indication that the focus had somehow shifted away from a trustee's "personal liability".

81 Prior to the enactment of the 1997 amendments, G. Marantz, Legal Advisor to the Department of Industry Canada, noted that they were intended to "provide the trustee with protection from being chased with deep-pocket liability" (Standing Committee on Industry, *Evidence*, No. 21, 2nd Sess., 35th Parl., September 25, 1996, at 17:15, as cited in C.A. reasons, at para. 198). I agree with the Regulator that the legislative debates give no hint of any intention by Parliament to immunize bankrupt estates from environmental liabilities. The notion that s. 14.06(4) was aimed at encouraging trustees in bankruptcy to accept mandates, and not at limiting estate liability, is further supported by the fact that the provision was inserted under the general heading "Appointment and Substitution of Trustees".

82 Furthermore, in drafting s. 14.06(4), Parliament chose to use exactly the same concept it had used earlier in s. 14.06(2): by their express wording, where either provision applies, a trustee is not "personally liable". This cannot have been an oversight given that s. 14.06(4) was added to the *BIA* some five years after the enactment of s. 14.06(2). Since both provisions deal expressly with the protection of trustees from being "personally liable", it is very difficult to accept that they could be concerned with different kinds of liability. By their wording, s. 14.06(2) and s. 14.06(4) are clearly both concerned with the same concept. Indeed, if one interprets s. 14.06(4) as extending to estate liability, then there is no principled reason not to interpret s. 14.06(2) in the same way. However, it is undisputed that this was not Parliament's intention in enacting s. 14.06(2).

83 Similarly, Parliament has also chosen to use the same concept found in both s. 14.06(4) and s. 14.06(2) in a third part of the 14.06 scheme, namely s. 14.06(1.2). This provision states that a trustee carrying on the business of a debtor or continuing the employment of a debtor's employees is not "personally liable" in respect of certain enumerated liabilities, including as a successor employer. Although this provision is not directly raised in this litigation, by its own terms, it clearly does not and cannot refer to the liability of the bankrupt estate. Again, it is difficult to conceive of how Parliament could have specified that a trustee is not "personally liable", using the ordinary, grammatical sense of that phrase, in both s. 14.06(1.2) and s. 14.06(2), but then intended the phrase to be read in a completely different and illogical manner in s. 14.06(4). All three provisions refer to the personal liability of a trustee, and all three must be interpreted consistently. Indeed, I note that the concept of a trustee being "not personally liable" is also used consistently in other parts of the *BIA* unrelated to the s. 14.06 scheme — see, for example, s. 80 and s. 197(3).

84 This interpretation of s. 14.06(4) is also bolstered by the French wording of s. 14.06. The French versions of both s. 14.06(2) and s. 14.06(4) refer to a trustee's protection from personal liability "*ès qualités*". This French expression is defined by *Le Grand Robert de la langue française* (2nd ed. 2001) dictionary as referring to someone acting "à cause d'un titre, d'une fonction particulière", which, in English, would mean acting by virtue of a title or specific role. The *Robert & Collins* dictionary (online) translates "*ès qualités*" as in "one's official capacity". In using this expression in s. 14.06(4), Parliament is therefore stating that, where "disclaimer" properly occurs, a trustee, is not personally liable, in its capacity as trustee, for orders to remedy any environmental condition or damage affecting the "disclaimed" property. These provisions are clearly not concerned with the concept of estate liability. The French versions of s. 14.06(2) and s. 14.06(4) thus utilize identical language to describe the limitation of liability they offer trustees. It is almost impossible to conceive of Parliament using identical language in two such closely related provisions and yet intending different meanings. Accordingly, a trustee is not personally liable in its official capacity as representative of the bankrupt estate where it invokes s. 14.06(4).

85 Prior to this litigation, the case law on s. 14.06 was somewhat scarce. However, this Court has considered the s. 14.06 scheme once before, in *GMAC Commercial Credit Corp. - Canada v. TCT Logistics Inc.*, 2006 SCC 35, [2006] 2 S.C.R. 123(S.C.C.) . In that case, comments made by both the majority and the dissenting judge support my conclusion that s. 14.06(4) is concerned only with the personal liability of trustees. Abella J., writing for the majority, explained that "where Parliament has intended to confer immunity on trustees or receivers from certain claims, it has done so explicitly" (para. 67). As examples of this principle, she referred to 14.06(1.2) and, most notably for our purposes, to s. 14.06(4), which she described as follows: "trustee immune in certain circumstances from environmental liabilities" (para. 67). In her dissent, Deschamps J. explained that a "trustee is not personally bound by the bankrupt's obligations" (para. 91). She noted that trustees are protected by the provisions that confer immunity upon them, including s. 14.06 (1.2), (2) and (4).

86 Although the dissenting reasons focus on the source of the "disclaimer" power in s. 14.06(4), nothing in this case turns on either the source of the "disclaimer" power or on whether GTL successfully "disclaimed" the Renounced Assets. I would note that, while the dissenting reasons rely on a purported common law power of "disclaimer", the Court has been referred to no cases — and the dissenting reasons have cited none — demonstrating the existence of a common law power allowing trustees to "disclaim" *real property*. In any case, regardless of the source of the "disclaimer" power, nothing in s. 14.06(4) suggests that, where a trustee does "disclaim" real property, the result is that it is simply free to walk away from the environmental orders applicable to it. Quite the contrary — the provision is clear that, where an environmental order has been made, the result of an act of "disclaimer" is the cessation of personal liability. No effect of "disclaimer" on the liability of the bankrupt estate is

specified. Had Parliament intended to empower trustees to walk away entirely from assets subject to environmental liabilities, it could easily have said so.

87 Additionally, as I have mentioned, s. 14.06(4)'s scope is not narrowed to a "disclaimer" in its formal sense. Under s. 14.06(4)(a)(ii), a trustee is not personally liable for an environmental order where the trustee "abandons, disposes of or otherwise releases any interest in any real property". This appeal does not, however, require us to decide what constitutes abandoning, disposing of or otherwise releasing real property for the purpose of s. 14.06(4), and I therefore leave the resolution of this question for another day. Nor does this appeal require us to decide the effects of a successful divestiture under s. 20 of the BIA. Section 20 of the BIA was not raised or relied upon by GTL as providing it with the authority to walk away from all responsibility, obligation or liability regarding the Renounced Assets.

88 The dissenting reasons argue that certain other parts of the s. 14.06 scheme make the most sense if s. 14.06(4) limits estate liability. Other than s. 14.06(2), none of these provisions is in issue in this litigation, and none of them was relied on by GTL. Regardless, in view of the clear and unambiguous wording of s. 14.06(4), less weight should be given to its statutory context. This is particularly so given that the proposed alternative interpretation would require the Court to read words such as "personally" out of the subsection. As has been noted, when the words of a provision are precise and unequivocal, their ordinary meaning plays a dominant role in the interpretive process (*Canada Trustco Mortgage Co. v. R.*, 2005 SCC 54, [2005] 2 S.C.R. 601 (S.C.C.) , at para. 10). Ultimately, the consequences of a trustee's "disclaimer" are clear — protection from personal liability, not from estate liability. There is no ambiguity on the face of s. 14.06(4). This Court has no option other than to accede to the clear intention of Parliament.

89 I turn now to the relationship between s. 14.06(2) and (4).

(b) How Section 14.06(4) Is Distinguishable From Section 14.06(2)

90 In this case, GTL relied solely on s. 14.06(4) in purporting to "disclaim" the Renounced Assets. However, as I will explain, GTL is fully protected from personal liability for the environmental liabilities associated with those assets whether it is understood as having "disclaimed" the Renounced Assets or not. However, it cannot simply "walk away" from the Renounced Assets in either case.

91 Regardless of whether GTL can access s. 14.06(4) (in other words, regardless of whether it has "disclaimed"), it is already fully protected from personal liability in respect of environmental matters by s. 14.06(2). Section 14.06(2) protects trustees from personal liability for "any environmental condition that arose or environmental damage that occurred", unless it is established that the condition arose or the damage occurred after the trustee's appointment and as a result of their gross negligence or wilful misconduct. In this case, it is not disputed that the environmental condition or damage leading to the Abandonment Orders arose or occurred prior to GTL's appointment. Section 14.06(2) provides trustees with protection from personal liability as broad as that provided by s. 14.06(4). Although, on the face of the provisions, there are two ways in which s. 14.06(4) may appear to offer broader protection, neither of them withstands closer examination.

92 First, the Regulator submits that the protection offered by s. 14.06(4) should be distinguished from that offered by s. 14.06(2) on the basis that the former is concerned with orders while the latter is concerned with environmental obligations generally. I agree with the dissenting reasons that a persuasive distinction cannot be drawn between liability for an environmental condition or environmental damage (purportedly covered by s. 14.06(2)) and liability for failure to comply with an order to remedy such a condition or such damage (purportedly covered by s. 14.06(4)). As the dissenting reasons note, "[t]his distinction is entirely artificial" (para. 212). The underlying liability addressed through environmental orders is the liability provided for in s. 14.06(2): an "environmental condition that arose or environmental damage that occurred". Second, on the face of s. 14.06(4), no exceptions are carved out for gross negligence or wilful misconduct post-appointment, unlike in s. 14.06(2). However, s. 14.06(4) is expressly made "subject to subsection (2)". I agree with the dissenting reasons that the only possible interpretation of this proviso is that, where the trustee has caused an environmental condition or environmental damage through its wilful misconduct or gross negligence, the trustee will still be personally liable, regardless of its reliance on s. 14.06(4).

93 It follows that s. 14.06(4) does not provide trustees with protection from personal liability any broader than the protection provided by s. 14.06(2). Despite this, in my view, Parliament had good reasons for enacting s. 14.06(4) in 1997. The first was to make it clear to trustees that they had complete protection from personal liability in respect of environmental conditions and damage (absent wilful misconduct or gross negligence), especially in situations where they have "disclaimed". The Hansard evidence shows that one of the impetuses for the 1997 reforms was the desire of trustees for further certainty. The second was to clarify the effect of a trustee's "disclaimer", on the liability of the *bankrupt estate* for orders to remedy an environmental condition or damage. In other words, s. 14.06(4) makes it clear not just that a trustee who "disclaims" real property is exempt from personal liability under environmental orders applicable to that property, but also that the liability of the bankrupt estate is unaffected by such "disclaimer".

94 In 1992, Parliament turned its attention to the potential liability of trustees in the environmental context and enacted s. 14.06(2). The provision originally stated that trustees were protected from personal liability for any environmental condition that arose or any environmental damage that occurred "(a) before [their] appointment ... or (b) after their appointment except where the condition arose or the damage occurred as a result of their failure to exercise due diligence". The Hansard evidence demonstrates that trustees were unhappy with the original language of s. 14.06(2). As Mr. Hains explained, they complained that the due diligence standard was "too vague. No one knows what it does and it may vary from one case to another. With the vagueness of the standard and what may be required to satisfy it, and with the risk of personal liability, the trustees were not even interested in investigating how they might exercise due diligence" (*Proceedings of the Standing Senate Committee on Banking, Trade and Commerce*, No. 13, 2nd Sess., 35th Parl., November 4, 1996, at pp. 15-16).

95 As a result, Parliament made reforms to the *BIA* in 1997. These reforms not only changed the standard of protection offered to trustees by s. 14.06(2) by adopting the current language, but also introduced s. 14.06(4). As is evident from their shared language, the provisions were intended to work together to clarify a trustee's protection from personal liability for any environmental condition or damage. Section 14.06(4) provided the certainty that trustees had been seeking in the years prior to 1997. For the first time, it explicitly linked the concept of "disclaimer" to the scheme protecting trustees from environmental liability. Whether it is understood as a common law power or as a reference to other statutory provisions, the concept of "disclaimer" predates s. 14.06(4) itself, as well as the 1992 version of s. 14.06(2). "Disclaimer" is also applicable in other contexts, such as in relation to executory contracts, as discussed in *New Skeena Forest Products Inc. v. Kitwanga Lumber Co.*, 2005 BCCA 154, 251 D.L.R. (4th) 328 (B.C. C.A.).

96 Prior to 1997, the effects of a "disclaimer" of real property on environmental liability was unclear. In particular, it was unclear what effect "disclaimer" might have on the liability of the bankrupt estate, given that environmental legislation imposed liability based on the achievement of the status of owner, party in control or licensee (see J. Klimek, *Insolvency and Environment Liability* (1994), at p. 4-19). By enacting s. 14.06(4), Parliament clarified that the effect of the "disclaimer" of real property was to limit the personal liability of the trustee for orders to remedy any environmental condition or damage, but not to limit the liability of the bankrupt estate. Parliament could have merely updated the language of s. 14.06(2) in 1997, but this would have left the question of "disclaimer" and estate liability unaddressed. Knowledge of the impact of "disclaimer" could be important to a trustee who is deciding whether to accept a mandate. Section 14.06(4) thus went a considerable way towards resolving the vagueness of which trustees had complained prior to 1997.

97 A notable aspect of the scheme crafted by Parliament is that s. 14.06(4) applies "[n]otwithstanding anything in any federal or provincial law". In enacting s. 14.06(4), Parliament specified the effect of the "disclaimer" of real property solely in the context of *environmental orders*. The effect of "disclaimer" on liability in other contexts was not addressed. Parliament was concerned with orders to remedy any environmental condition or damage, where, liability frequently attaches based on the status of owner, party in control, or licensee. Parliament did not want trustees to think that they could avoid the estate's environmental liability through the act of "disclaiming". Accordingly, it used specific language indicating that the effect of the "disclaimer" of real property on orders to remedy an environmental condition or damage is merely that the trustee is not personally liable. It is possible that the effect of "disclaimer" on the liability of the bankrupt estate might be different in other contexts.

98 Section 14.06(4) thus makes it clear that "disclaimer" by the trustee has no effect on the bankrupt estate's continuing liability for orders to remedy any environmental condition or damage. The liability of the bankrupt estate is, of course, an issue with which s. 14.06(2) is absolutely unconcerned. Thus, it can be seen that s. 14.06(4) and s. 14.06(2) are not in fact the same — they may provide trustees with the same protection from personal liability, but only the former has any relevance to the question of estate liability. Section 14.06(2) protects trustees without having to be invoked by them — it does not speak to the results of a trustee's "disclaimer".

99 Where a trustee has "disclaimed" real property, it is not personally liable under an environmental order applicable to that property, but the bankrupt estate itself remains liable. Of course, the fact that the bankrupt estate remains liable even where a trustee invokes s. 14.06(4) does not necessarily mean that the trustee must comply with environmental obligations in priority to all other claims. The priority of an environmental claim depends on the proper application of the *Abitibi* test, as I will discuss below.

100 Accordingly, regardless of whether GTL is properly understood as having "disclaimed", the result is the same. Given that the environmental condition or damage arose or occurred prior to GTL's appointment, it is fully protected from personal liability by s. 14.06(2). However, "disclaimer" does not empower a trustee to simply walk away from the "disclaimed" assets when the bankrupt estate has been ordered to remedy any environmental condition or damage. The environmental liability of the bankrupt estate remains unaffected.

101 I offer the following brief comment on the balance of the s. 14.06 scheme, although, as mentioned, none of those provision is actually in issue before this Court. The dissenting reasons argue that interpreting s. 14.06(4) as being concerned solely with the personal liability of trustees creates interpretive issues with the balance of the s. 14.06 scheme. In my view, this is not a reason to ignore the plain meaning of s. 14.06(4). No principle of statutory interpretation requires that the plain meaning of a provision be contorted to make its scheme more coherent. This Court has been tasked with interpreting s. 14.06(4), and, in my view, the wording of s. 14.06(4) admits of only one interpretation.

(2) There Is No Operational Conflict or Frustration of Purpose Between Section 14.06(2) and Section 14.06(4) of the BIA and the Alberta Regulatory Scheme

102 The operational conflicts between the *BIA* and the Alberta legislation alleged by GTL arise from its status as a "licensee" under the *OGCA* and the *Pipeline Act*. As I have just demonstrated, s. 14.06(4) does not empower a trustee to walk away from all responsibilities, obligations and liabilities with respect to "disclaimed" assets. Rather, it clarifies a trustee's protection from environmental personal liability and makes it clear that a trustee's "disclaimer" does not affect the environmental liability of the bankrupt estate. Regardless of whether GTL effectively "disclaimed" the Renounced Assets, it cannot walk away from them. In light of the proper interpretation of s. 14.06(4), no operational conflict is caused by the fact that, under Alberta law, GTL, as a "licensee", remains responsible for abandoning the Renounced Assets utilizing the remaining assets of the Redwater estate. Likewise, no operational conflict is caused by the fact that the end-of-life liabilities associated with the Renounced Assets continue to be included in the calculation of Redwater's LMR.

103 Thus, regardless of whether it has effectively "disclaimed", s. 14.06(2) fully protects GTL from personal liability in respect of environmental matters affecting the Redwater estate. GTL notes that, on the face of the *OGCA* and the *Pipeline* Act, there is nothing specifically preventing the Regulator from holding it personally liable as a "licensee" for the costs of carrying out the Abandonment Orders. GTL submits that the mere possibility that it may be held personally liable for abandonment under the Alberta legislation creates an operational conflict with the protection from personal liability provided by s. 14.06(2) of the BIA.

104 There is no possibility of trustees facing personal liability for reclamation or remediation — they are specifically protected from such liability by the *EPEA*, absent wilful misconduct or gross negligence. GTL is correct that its potential personal liability for abandonment as a "licensee" is not similarly capped at estate assets under the *OGCA* and the *Pipeline* Act. The Regulator submits that "[w]hile the definition of a licensee does not explicitly provide that the receiver's liability is limited to assets in the insolvency estate, such federal requirements are obviously read in to the provision and [are] explicitly included in other

legislation administered by the [Regulator], namely the [*EPEA*]" (A.F., at para. 104 (footnote omitted)). For its part, GTL says that it is no answer that the Regulator's practice is to impose liability only up to the value of the estate because, as ATB argues, without a specific statutory provision, "[p]ractices can change without notice" (ATB's factum, at para. 106).

105 I reject the proposition that the inclusion of trustees in the definition of "licensee" in the *OGCA* and the *Pipeline* Act should be rendered inoperative by the mere theoretical possibility of a conflict with s. 14.06(2). Such an outcome would be inconsistent with the principle of restraint which underlies paramountcy, as well as with the principles of cooperative federalism. The inclusion of trustees in the definition of "licensee" is an important part of the Alberta regulatory regime. It confers on them the privilege of operating the licensed assets of bankrupts while also ensuring that insolvency professionals are regulated during the lengthy periods of time when they manage oil and gas assets.

106 Importantly, the situation in this case is completely different from the one before the Court in *Moloney* . In that case, Gascon J. rejected the argument that there was no operational conflict because the bankrupt could voluntarily pay a provincial debt post discharge or could choose not to drive. He noted that "the test for operational conflict cannot be limited to asking whether the respondent can comply with both laws by renouncing the protection afforded to him or her under the federal law or the privilege he or she is otherwise entitled to under the provincial law" (para. 60). In the instant case, GTL retains both the protection afforded to it under the federal law (no personal liability) and the privilege to which it is entitled under the provincial law (ability to operate the bankrupt's assets in a regulated industry). GTL is not being asked to forego doing anything or to voluntarily pay anything. Nor is it urged that the Regulator could avoid conflict by declining to apply the impugned law during bankruptcy, as in Moloney , at para. 69. This is not a situation in which the Regulator might decline to apply the provincial law, but a situation in which the provincial law can be — and has been — applied during bankruptcy without conflict.

107 According to the evidence in this case, the *OGCA* and the *Pipeline* Act have included trustees in the definition of "licensee" for 20 years now, and, in that time, the Regulator has never attempted to hold a trustee personally liable. The Regulator does not look beyond the assets remaining in the bankrupt estate in seeking compliance with the bankrupt's environmental obligations. If the Regulator were to attempt to hold GTL personally liable under the Abandonment Orders, this would create an operational conflict between the *OGCA* and the *Pipeline* Act, and s. 14.06(2) of the *BIA*, rendering the former two Acts inoperative to the extent of the conflict. As it stands, however, GTL can both be protected from personal liability by s. 14.06(2) and comply with the Alberta regime in administering the Redwater estate as a "licensee".

108 The suggestion, in the dissenting reasons, that the Regulator is seeking to hold GTL personally liable is untrue. No one disputes that significant value remains in the Redwater estate. Although the Regulator's entitlement is, of course, dependent on the priorities established by the *BIA*, the history of this regulatory system demonstrates that there are ways for the Regulator to access that value without holding GTL personally liable. It is not this Court's role to mandate a particular mechanism for the Regulator to achieve that end. Even if this was not the case, the fact that Redwater's assets have already been sold and are currently being held in trust means that personal liability is no longer a concern. There is no operational conflict.

109 I turn now to frustration of purpose. The chambers judge identified a number of purposes of s. 14.06 in his reasons. GTL relies on three of them, namely: "limit[ing] the liability of insolvency professionals, so that they will accept mandates despite environmental issues"; "reduc[ing] the number of abandoned sites in the country"; and "permit[ing] receivers and trustees to make rational economic assessments of the costs of remedying environmental conditions, and giv[ing] receivers and trustees the discretion to determine whether to comply with orders to remediate property affected by these conditions" (chambers judge's reasons, at paras. 128-29).

110 The burden is on GTL to establish the specific purposes of s. 14.06(2) and s. 14.06(4) if it wishes to demonstrate a conflict. This has been described as a "high" burden, requiring "[c]lear proof of purpose" (*Lemare*, at para. 26). In my view, based on the plain wording of s. 14.06(2) and s. 14.06(4) (a "trustee is not personally liable") and the Hansard evidence, it is evident that the purpose of these provisions is to protect trustees from personal liability in respect of environmental matters affecting the estates they are administering.

111 This purpose is not frustrated by the inclusion of trustees in the definition of "licensee" in the *OGCA* and the *Pipeline Act*. The Regulator's position is that it would never attempt to hold a trustee personally liable. Trustees have been considered licensees under these Acts for over 20 years, and they have yet to face the scourge of personal liability. To find an essential part of Alberta's regulatory regime inoperative based on the theoretical possibility of frustration of purpose would be inconsistent with the principles of paramountcy and cooperative federalism. To date, Alberta's regulatory regime has functioned as intended without frustrating the purpose of s. 14.06(2) or s. 14.06(4) of the BIA.

112 In arguing that s. 14.06 has the broader goals of reducing the number of abandoned sites (in the non-technical sense of "abandoned") and encouraging trustees to accept mandates, GTL relies on what it calls "the available extrinsic evidence and the actual words and structure of that section" (GTL's factum, at para. 91). In my view, the arguments it advances are insufficient for GTL to meet its high burden and demonstrate that the purpose of s. 14.06(2) and s. 14.06(4) should be defined as including these broader objectives. Reducing the number of unaddressed sites and encouraging trustees to accept mandates may be positive side effects of s. 14.06(2) and s. 14.06(4), but it is a stretch to see them as the purpose of the provisions. Like the provision at issue in *Lemare*, it is more plausible that they serve a "simple and narrow purpose" (para. 45).

113 Regardless, even if it is assumed that such broader goals are part of the purpose of s. 14.06(2) and s. 14.06(4), the evidence does not show that they are frustrated by the inclusion of trustees in the statutory definition of "licensee". Relying on statements made by GTL in the Second Report, ATB asserts that, if trustees continue to be considered licensees and if environmental claims continue to be binding on estates, then, in situations akin to that of the Redwater insolvency, trustees will refuse to accept appointments. The fact that, prior to this litigation, it had been settled in Alberta since at least *Northern Badger* that certain ongoing environmental obligations in the oil and gas industry continue to be binding on bankrupt estates must be weighed against this bald allegation. It was also well established that the Regulator would never attempt to hold insolvency professionals personally liable for such obligations. As noted by the Canadian Association of Petroleum Producers, there is nothing to suggest that this well-established state of affairs has led insolvency professionals to refuse to accept appointments or has increased the number of orphaned sites. There is no reason why the Regulator and trustees cannot continue to work together collaboratively, as they have for many years, to ensure that end-of-life obligations are satisfied, while at same time maximizing recovery for creditors.

(3) Conclusion on Section 14.06 of the BIA

114 There is no conflict between the Alberta legislation and s. 14.06 of the BIA that makes the definition of "licensee" in the former inapplicable insofar as it includes GTL. GTL continues to have the responsibilities and duties of a "licensee" to the extent that assets remain in the Redwater estate. Nonetheless, GTL submits that, even if it cannot walk away from the Renounced Assets by invoking s. 14.06(4), the environmental obligations associated with those assets are unsecured claims of the Regulator for the purposes of the *BIA*. GTL says that the order of priorities in the *BIA* requires it to satisfy the claims of Redwater's secured creditors before the Regulator's claims, which rank equally with the claims of other unsecured creditors. According to GTL, the Regulator's attempts to use its statutory powers to prioritize its environmental claims conflict with the *BIA*. I will now consider this alleged conflict, which turns on the *Abitibi* test.

C. The Abitibi Test: Is the Regulator Asserting Claims Provable in Bankruptcy?

115 The equitable distribution of the bankrupt's assets is one of the purposes of the *BIA*. It is achieved through the collective proceeding model. Creditors of the bankrupt wishing to enforce a claim provable in bankruptcy must participate in the collective proceeding. Their claims will ultimately have the priority assigned to them by the *BIA*. This ensures that the bankrupt's assets are distributed fairly. This model avoids inefficiency and chaos, thus maximizing global recovery for all creditors. For the collective proceeding model to be viable, creditors with provable claims must not be allowed to enforce them outside the collective proceeding.

116 It is well established that a provincial law will be rendered inoperative in the context of bankruptcy where the effect of the law is to conflict with, reorder or alter the priorities established by the *BIA*. Both Martin J.A. and the chambers judge

dealt with the altering of bankruptcy priorities under the frustration of purpose branch of paramountcy. In my view, it could also be plausibly advanced that a provincial law that has the effect of reordering bankruptcy priorities is in operational conflict with the *BIA* — such was the conclusion in Husky Oil , at para. 87. For the purposes of this appeal, there is no need to decide which would be the appropriate branch of the paramountcy analysis. Under either branch, the Alberta legislation authorizing the Regulator's use of its disputed powers will be inoperative to the extent that the use of these powers during bankruptcy alters or reorders the priorities established by the *BIA*.

117 GTL says that this is precisely the effect of the obligations imposed on the Redwater estate by the Regulator through the use of its statutory powers, even if it cannot walk away from the Renounced Assets by invoking s. 14.06(4). Parliament has assigned a particular rank to environmental claims that are provable in bankruptcy. It is accepted that the limited super priority for environmental claims created by s. 14.06(7) of the BIA does not apply here, and accordingly, says GTL, the Regulator is an ordinary creditor as regards its environmental claims — in other words, neither a secured nor a preferred creditor. The Regulator's environmental claims are thus to be paid rateably with those of Redwater's other ordinary creditors under s. 141 of the BIA. GTL argues that, to comply with the Abandonment Orders or LMR requirements, the Redwater estate will have to expend funds prior to distributing its assets to the secured creditors, and that this amounts to the Regulator using its statutory powers to create for itself a priority in bankruptcy to which it is not entitled.

118 However, only claims provable in bankruptcy must be asserted within the single proceeding. Other claims are not stayed upon bankruptcy and continue to be binding on the estate. In *Abitibi*, this Court clearly stated that not all environmental obligations enforced by a regulator will be claims provable in bankruptcy. As a matter of principle, bankruptcy does not amount to a licence to disregard rules. The Regulator says that it is not asserting any claims provable in the bankruptcy, so the Redwater estate must comply with its environmental obligations, to the extent that assets are available to do so.

119 The resolution of this issue turns on the proper application of the *Abitibi* test for determining whether a particular regulatory obligation amounts to a claim provable in bankruptcy. To reiterate:

> First, there must be a debt, a liability or an obligation to a *creditor*. Second, the debt, liability or obligation must be incurred *before the debtor becomes bankrupt*. Third, it must be possible to attach a *monetary value* to the debt, liability or obligation. [Emphasis in original; para. 26.]

120 There is no dispute that in this appeal, the second part of the test is met. Accordingly, I will discuss only the first and the third parts of the test.

121 In this Court, the Regulator, supported by various interveners, raised two concerns about how the *Abitibi* test has been applied, both by the courts below and in general. The first concern is that the "creditor" step of the *Abitibi* test has been interpreted too broadly in cases such as the instant appeal and *Nortel Networks Corp., Re*, 2013 ONCA 599, 368 D.L.R. (4th) 122 (Ont. C.A.) ("*Nortel* CA"), and that, in effect, this step of the test has become so pro forma as to be practically meaningless. The second concern has to do with the application of the "monetary value" step of the *Abitibi* test by the chambers judge and Slatter J.A. This step is generally called the "sufficient certainty" step, based on the guidance provided in *Abitibi*. The argument here is that the courts below went beyond the test established in *Abitibi* by focusing on whether Redwater's regulatory obligations were "intrinsically financial". Under *Abitibi*, the sufficient certainty analysis should have focused on whether the Regulator would ultimately perform the environmental work and assert a monetary claim for reimbursement.

122 In my view, both concerns raised by the Regulator have merit. As I will demonstrate, *Abitibi* should not be taken as standing for the proposition that a regulator is always a creditor when it exercises its statutory enforcement powers against a debtor. On a proper understanding of the "creditor" step, it is clear that the Regulator acted in the public interest and for the public good in issuing the Abandonment Orders and enforcing the LMR requirements and that it is, therefore, not a creditor of Redwater. It is the public, not the Regulator or the General Revenue Fund, that is the beneficiary of those environmental obligations; the province does not stand to gain financially from them. Although this conclusion is sufficient to resolve this aspect of the appeal, for the sake of completeness, I will also demonstrate that the chambers judge erred in finding that, on these facts, there is sufficient certainty that the Regulator will ultimately perform the environmental work and assert a claim

for reimbursement. To conclude, I will briefly comment on why the *effects* of the end-of-life obligations do not conflict with the priority scheme in the *BIA*.

(1) The Regulator Is Not a Creditor of Redwater

123 The Regulator and the supporting interveners are not the first to raise issues with the "creditor" step of the *Abitibi* test. In the six years since *Abitibi* was decided, concerns about the "creditor" step and the fact that, as it is commonly understood, it will seemingly be satisfied in all — or nearly all — cases have also been expressed by academic commentators, such as A. J. Lund, "Lousy Dentists, Bad Drivers, and Abandoned Oil Wells: A New Approach to Reconciling Provincial Regulatory Regimes with Federal Insolvency Law" (2017) 80 Sask. L. Rev. 157, at p. 178, and Stewart. This Court has not had an opportunity to comment on *Abitibi* since it was decided. However, the interpretation of the "creditor" step adopted by lower courts, including the majority of the Court of Appeal in this case, has focused on certain comments found at para. 27 of *Abitibi*, and the "creditor" step has accordingly been found to be satisfied whenever a regulator exercises its enforcement powers against a debtor (see, for example, C.A. reasons, at para. 60; *Nortel* CA, at para. 16).

124 GTL submits that these lower courts have correctly interpreted and applied the "creditor" step. It further submits that, because of *Abitibi*, the 1991 Alberta Court of Appeal decision in *Northern Badger* is of no assistance in analyzing the creditor issue. Conversely, the Regulator forcefully argues that *Abitibi* must be understood in the context of its own unique facts and that it did not overrule *Northern Badger*. Relying on *Northern Badger*, the Regulator argues that a regulator exercising a power to enforce a public duty is not a creditor of the individual or corporation subject to that duty. Like Martin J.A., I agree with the Regulator on this point. If, as GTL urges and the majority of the Court of Appeal concluded, the "creditor" step is satisfied whenever a regulator exercises its enforcement powers against a debtor, then it is hard to imagine a situation in which the "creditor" step would not be satisfied by the actions of an environmental regulator. Stewart was correct to suppose that "[s]urely, the Court did not intend this result" (p. 189). For the "creditor" step to have meaning, "there must be situations where the other two steps could be met... but the order [or obligation] is still not a provable claim because the regulator is not a creditor of the bankrupt" (Attorney General of Ontario's factum, at para. 39).

125 Before further explaining my conclusion on this point, I must address a preliminary issue: the fact that the Regulator conceded in the courts below that it was a creditor. It is well established that concessions of law are not binding on this Court: see *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control & Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781(S.C.C.) , at para. 44; *M. v. H.*, [1999] 2 S.C.R. 3 (S.C.C.) , at para. 45; *R. v. Sappier*, 2006 SCC 54, [2006] 2 S.C.R. 686 (S.C.C.) , at para. 62. As noted by L'Heureux-Dubé J., in dissent, but not on this point, in *R. v. Elshaw*, [1991] 3 S.C.R. 24 (S.C.C.) , at p. 48, "the fact that an issue is conceded below means nothing in and of itself". Although concessions by the parties are often relied upon, it is ultimately for this Court to determine points of law. For several reasons, no fairness concerns are raised by disregarding the Regulator's concession in this case.

126 First, in a letter to GTL dated May 14, 2015, the Regulator advanced the position that it was "not a creditor of [Redwater]", but, rather, had a "statutory mandate to regulate the oil and gas industry in Alberta" (GTL's Record, vol. 1, at p. 78). I note that this was the initial communication between the Regulator and GTL, only two days after the latter's appointment as receiver of Redwater's property. Second, the issue of whether the Regulator is a creditor was discussed in the parties' factums. Third, during oral arguments before this Court, the Regulator was questioned about its concession. Counsel made the undisputed point that higher courts are not bound by such concessions and took the position that, on the correct interpretation of *Abitibi*, the Regulator was not a creditor. Fourth, when the Regulator's status as a creditor was raised as an issue before this Court, opposing counsel did not argue that they would have adduced further evidence on the issue had it been raised in the courts below. Finally, a proper understanding of the "creditor" step of the *Abitibi* test is of fundamental importance to the proper functioning of the national bankruptcy scheme and of provincial environmental schemes throughout Canada. I conclude that this case is one in which it is appropriate to disregard the Regulator's concession in the courts below.

127 Returning to the analysis, I note that the unique factual matrix of*Abitibi* must be kept in mind. In that case, Newfoundland and Labrador expropriated most of AbitibiBowater's property in the province without compensation. Subsequently, AbitibiBowater was granted a stay under the *CCAA*. It then filed a notice of intent to submit a claim to arbitration

under the *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, Can. T.S. 1994 No. 2 ("NAFTA"), for losses resulting from the expropriation. In response, Newfoundland's Minister of Environment and Conservation ordered AbitibiBowater to remediate five sites pursuant to the Environmental Protection Act, S.N.L. 2002, c. E-14.2 ("EPA"). Three of the five sites had been expropriated by Newfoundland and Labrador. The evidence led to the conclusion that "the Province never truly intended that Abitibi was to perform the remediation work", but instead sought a claim that could be used as an offset in connection with AbitibiBowater's NAFTA claim (*Abitibi*, at para. 54). In other words, the Province sought a financial benefit from the remediation orders.

128 In this appeal, it is not disputed that, in seeking to enforce Redwater's end-of-life obligations, the Regulator is acting in a *bona fide* regulatory capacity and does not stand to benefit financially. The Regulator's ultimate goal is to have the environmental work actually performed, for the benefit of third-party landowners and the public at large. There is no colourable attempt by the Regulator to recover a debt, nor is there an ulterior motive on its part, as there was in*Abitibi*. The distinction between the facts of this appeal and those of*Abitibi* becomes even clearer when one examines the comprehensive reasons of the chambers judge in *Abitibi*. The crux of the findings of Gascon J. (as he then was) is found at paras. 173-76:

> ... the Province stands as the direct beneficiary, from a monetary standpoint, of Abitibi's compliance with the EPA Orders. In other words, the execution in nature of the EPA Orders would result in a definite credit to the Province's own "balance sheet". Abitibi's liability in that regard is an asset for the Province itself.
>
> With all due respect, this is not regulatory in nature; it is rather purely financial in reality. This is, in fact, closer to a debtor-creditor relationship than anything else.
>
> This is quite far from the situation of the detached regulator or public enforcer issuing order for the public good. Here, the Province itself derives the direct pecuniary benefit from the required compliance of Abitibi to the EPA Orders. The Province stands to directly gain in the outcome. None of the cases submitted by the Province bear any similarity to the fact pattern in the present proceedings.
>
> From this perspective, it is the hat of a creditor that best fits the Province, not that of a disinterested regulator.
>
> (*AbitibiBowater inc., Re*, 2010 QCCS 1261, 68 C.B.R. (5th) 1(C.S. Que.))

129 This Court recognized in *Abitibi* that the Province "easily satisfied" the creditor requirement (para 49). It was therefore not necessary to consider at any length how the "creditor" step should be understood or how it would apply in other factual situations. However, even at para. 27 of *Abitibi*, the paragraph relied on by the majority of the Court of Appeal, Deschamps J. made a point of noting that "[m]ost environmental regulatory bodies *can be* creditors in respect of monetary or non-monetary obligations imposed by the relevant statutes" (emphasis added). The interpretation of the "creditor" step adopted by the majority of the Court of Appeal and urged upon this Court by GTL leaves no room for a regulator that enforces obligations not to be a creditor, though this possibility was clearly contemplated by para. 27 of*Abitibi*. As noted above, GTL's interpretation leaves the "creditor" step with no independent work to perform.

130 *Northern Badger* established that a regulator enforcing a public duty by way of non-monetary order is not a creditor. I reject the claim in the dissenting reasons that*Northern Badger* should be interpreted differently. First, I note that whether the Regulator has a contingent claim is relevant to the sufficient certainty test, which presupposes that the Regulator is a creditor. I cannot accept the proposition in the dissenting reasons that *Northern Badger* was concerned with what would become the third prong of the *Abitibi* test. In *Northern Badger*, Laycraft C.J.A. accepted that abandonment was a liability and identified the issue as "whether that liability is to the board so that it is the board which is the creditor" (para. 32). Second, the underlying scenario here with regards to Redwater's end-of-life obligations is exactly the same as in *Northern Badger* — a regulator is ordering an entity to comply with its legal obligations in furtherance of the public good. This reasoning from *Northern Badger* was subsequently adopted in cases such as *Strathcona (County) v. Fantasy Construction Ltd. Estate (Trustee of)*, 2005 ABQB 794, 261 D.L.R. (4th) 221 (Alta. Q.B.), at paras. 23-25, and *Lamford Forest Products Ltd., Re* (1991), 86 D.L.R. (4th) 534 (B.C. S.C.).

131 I cannot agree with the suggestion by the majority of the Court of Appeal in this case that *Northern Badger* "is of limited assistance" in the application of the *Abitibi* test (para. 63). Rather, I agree with Martin J.A. that *Abitibi* did not overturn the reasoning in *Northern Badger*, but instead "emphasized the need to consider the substance of provincial regulation in assessing whether it creates a claim provable in bankruptcy" (para. 164). As Martin J.A. noted, even following *Abitibi*, the law continues to be that "public obligations are not provable claims that can be counted or compromised in the bankruptcy" (para. 174).*Abitibi* clarified the scope of *Northern Badger* by confirming that a regulator's environmental claims will be provable claims under certain circumstances. It does not stand for the proposition that a regulator exercising its enforcement powers is always a creditor. The reasoning in *Northern Badger* was simply not applicable on the facts of *Abitibi*, given the actions of the Province as outlined above.

132 In *Abitibi*, Deschamps J. noted that insolvency legislation had evolved in the years since *Northern Badger*. That legislative evolution did not, however, change the meaning to be ascribed to the term "creditor". In this regard, I agree with the conclusion in Strathcona (County) v. Fantasy Construction Ltd. Estate (Trustee of)2005 ABQB 559256 D.L.R. (4th) 536Alta. Q.B., that the amendments to the *BIA* dealing with environmental matters in the years following *Northern Badger* cannot be interpreted as having overturned the reasoning in that case. As should be clear from the earlier discussion of s. 14.06, the amendments to the *BIA* do not speak to when a regulator enforcing an environmental claim is a creditor.

133 The conclusion that the reasoning in *Northern Badger* continues to be relevant since *Abitibi* and the amendments to insolvency legislation also finds support in the writings of academic commentators. Stewart's position is that, while*Abitibi* discussed*Northern Badger*, it did not overturn it. He urges this Court to clarify that there remains "a distinction between a regulatory body that is a creditor because it is enforcing a debt, and a regulatory body that is not a creditor because it is enforcing the law" (p. 221). Similarly, Lund argues that a court should "consider the importance of the public interests protected by the regulatory obligation when deciding whether the debtor owes a debt, liability or obligation to a creditor" (p. 178).

134 For the foregoing reasons, *Abitibi* cannot be understood as having changed the law as summarized by Laycraft C.J.A. I adopt his comments at para. 33 of *Northern Badger*:

> The statutory provisions requiring the abandonment of oil and gas wells are part of the general law of Alberta, binding every citizen of the province. All who become licensees of oil and gas wells are bound by them. Similar statutory obligations bind citizens in many other areas of modern life ... But the obligation of the citizen is not to the peace officer, or public authority which enforces the law. The duty is owed as a public duty by all the citizens of the community to their fellow citizens. When the citizen subject to the order complies, the result is not the recovery of money by the peace officer or public authority, or of a judgment for money, nor is that the object of the whole process. Rather, it is simply the enforcement of the general law. The enforcing authority does not become a "creditor" of the citizen on whom the duty is imposed.

135 Based on the analysis in *Northern Badger*, it is clear that the Regulator is not a creditor of the Redwater estate. The end-of-life obligations the Regulator seeks to enforce against Redwater are public duties. Neither the Regulator nor the Government of Alberta stands to benefit financially from the enforcement of these obligations. These public duties are owed, not to a creditor, but, rather, to fellow citizens, and are therefore outside the scope of "provable claims". I do not intend to suggest, however, that a regulator will be a creditor only where it acts exactly as the province did in*Abitibi*. There may very well be situations in which a regulator's actions fall somewhere between those in *Abitibi* and those in the instant case. Notably, unlike some previous cases, the Regulator has performed no environmental work itself. I leave such situations to be addressed in future cases in which there are full factual records. Here, it is clear that the Regulator is seeking to enforce Redwater's public duties, whether by issuing the Abandonment Orders or by maintaining the LMR requirements. The Regulator is not a creditor within the meaning of the *Abitibi* test.

136 I reject the suggestion that the foregoing analysis somehow overrules the first prong of the *Abitibi* test. The facts in *Abitibi* were not comparable to the facts of this appeal. Although this Court discussed*Northern Badger* in *Abitibi*, it merely referenced the subsequent amendments to the *BIA*, and did not overturn the earlier decision. The Court was clear that the ultimate outcome "must be grounded in the facts of each case" (para. 48). The dissenting reasons claim that, given the foregoing analysis, it will

be nearly impossible to find that regulators are ever creditors. *Abitibi* itself shows this not to be the case. Furthermore, as I have said, there may well be cases that fall between *Abitibi* and the present case. However, if *Abitibi* is read as requiring only a determination of whether the regulator has exercised an enforcement power, it will in fact be impossible for a regulator *not* to be a creditor. The dissenting reasons do not seriously deny this, merely suggesting that regulators can publish guidelines or issue licences. The Regulator does both, yet, under the approach taken in the dissenting reasons, it is powerless to take any practical steps in the public interest regarding its guidelines or licences without qualifying as a creditor. As I have explained,*Abitibi* clearly contemplates a place for regulators who are not creditors.

137 Strictly speaking, this is sufficient to dispose of this aspect of the appeal. However, additional guidance on the sufficient certainty analysis may prove helpful in future cases. Accordingly, I turn now to a discussion of the "sufficient certainty" step and of the reasons why the Abandonment Orders and the LMR conditions both fail on this step of the *Abitibi* test.

(2) There Is No Sufficient Certainty That the Regulator Will Perform the Environmental Work and Advance a Claim for Reimbursement

138 The "sufficient certainty" test articulated in paras. 30 and 36 in*Abitibi* essentially does no more than reorganize and restate the requirements of the relevant provisions of the BIA. Section 121(2) provides that contingent claims may be provable claims. In other words, contingent debts or liabilities owed by a bankrupt to a creditor may be, but are not necessarily, provable claims. Section 135(1.1) provides for the valuation of such a claim. A contingent claim must be capable of valuation under s. 135(1.1) — it cannot be too remote or speculative — in order to be a provable claim under s. 121(2).

139 Before the third step of the *Abitibi* test can even be reached, a regulator must already have been shown to be a creditor. I have concluded that, on the facts of this case, the Regulator is not a creditor of Redwater. However, for the purpose of explaining how I differ from the chambers judge on the "sufficient certainty" analysis, I will proceed as if the Regulator were, in fact, a creditor of Redwater in respect of the Abandonment Orders and LMR requirements. These end-of-life obligations do not directly require Redwater to make a payment to the Regulator. Rather, they are obligations requiring Redwater to *do something*. As discussed in *Abitibi*, if the Regulator were in fact a creditor, end-of-life obligations would be its contingent claims.

140 What a court must determine is whether there are sufficient facts indicating the existence of an environmental duty that will ripen into a financial liability owed to a regulator. In determining whether a non-monetary regulatory obligation of a bankrupt is too remote or too speculative to be included in the bankruptcy proceeding, the court must apply the general rules that apply to future or contingent claims. It must be sufficiently certain that the contingency will come to pass — in other words, that the regulator will enforce the obligation by performing the environmental work and seeking reimbursement.

141 I will now discuss the Abandonment Orders and the LMR requirements in turn and demonstrate how they fail to satisfy the "sufficient certainty" step of the *Abitibi* test.

(a) The Abandonment Orders

142 The Regulator has issued orders under the *OGCA* and the *Pipeline* Act requiring Redwater to abandon the Renounced Assets. Even if the Regulator were a creditor of Redwater, the Abandonment Orders would still have to be capable of valuation in order to be included in the bankruptcy process. In my view, it is not established either by the chambers judge's factual findings or by the evidence that it is sufficiently certain that the Regulator will perform the abandonments and advance a claim for reimbursement. The claim is too remote and speculative to be included in the bankruptcy process.

143 The chambers judge acknowledged that it was "unclear" whether the Regulator would perform the abandonments itself or would deem the wells subject to the Abandonment Orders to be orphans (para. 173). He stated that, in the latter case, the OWA would probably carry out the abandonments, although it was not clear when they would be completed. Indeed, the chambers judge acknowledged that, given the OWA's resources, it could take as long as 10 years for it to get around to performing the required environmental work on the Redwater property. He nonetheless concluded that — even though the "sufficient certainty" step was not satisfied in a "technical sense" — the situation met what had been intended in*Abitibi*. That conclusion was at least partly based on his finding that the Abandonment Orders were "intrinsically financial" (para. 173).

144 In my view, the chambers judge did not make a finding of fact that the Regulator would carry out the abandonments *itself*. As noted, he acknowledged that it was "unclear" whether the Regulator would perform the abandonments. This can hardly be deemed a finding of fact deserving of deference. In my view, considered as a whole, the evidence in this case leads to the conclusion that the Regulator will not abandon the Renounced Assets itself.

145 The Regulator is not in the business of performing abandonments. It has no statutory duty to do so. Abandonment is instead an obligation of the licensee. The evidence of the Regulator's affiant was that the Regulator very rarely abandons properties on behalf of licensees and virtually never does so where the licensee is in receivership or bankruptcy. The affiant stated that the Regulator had no intention of abandoning Redwater's licensed assets. As noted by the chambers judge, it is true that, in its letter to GTL dated July 15, 2015, the Regulator threatened to perform the abandonments itself, but the Regulator subsequently took no steps to follow up on that threat. Even if this letter should be accorded any weight, the contradiction between it and the Regulator's subsequent affidavits at the very least makes it difficult to say with anything approaching sufficient certainty that the Regulator intends to carry out the abandonments. These facts distinguish this case from *Abitibi*, in which the restructuring judge's findings were based on the premise that the province would most likely perform the remediation work itself.

146 Below, I will explain why the OWA's involvement is insufficient to satisfy the "sufficient certainty" test. First, I note that any reliance the chambers judge placed on the intrinsically financial nature of the Abandonment Orders was an error. In this regard, I am in complete agreement with Martin J.A. Considering whether an order is intrinsically financial is an erroneous interpretation of the third step of the *Abitibi* test. It is too broad and would result in a provable claim being found even where the existence of a monetary claim in bankruptcy is merely speculative. Thus, in *Nortel* CA, Juriansz J.A. rightly rejected the argument that the *Abitibi* test did not require a determination that the regulator would perform the environmental work and claim reimbursement, and that it was sufficient for there to be an environmental order requiring an expenditure of funds by the bankrupt estate. He held the following, at paras. 31-32:

> As I read it, the Supreme Court's decision is clear: ongoing environmental remediation obligations may be reduced to monetary claims that can be compromised in CCAA proceedings only where the province has performed the remediation work and advances a claim for reimbursement, or where the obligation may be considered a contingent or future claim because it is "sufficiently certain" that the province will do the work and then seek reimbursement.
>
> The respondents' approach is not only inconsistent with *AbitibiBowater Inc., Re*, it is too broad. It would result in virtually all regulatory environmental orders being found to be provable claims. As Deschamps J. observed, a company may engage in activities that carry risks. When those risks materialize, the costs are borne by those who hold a stake in the company. A risk that results in an environmental obligation becomes subject to the insolvency process only when it is in substance monetary and is in substance a provable claim.

147 As the chambers judge correctly acknowledged, the fact that the Regulator would not conduct the abandonments itself does not mean that it would wash its hands of the Renounced Assets. Rather, if necessary, it would designate them as orphans pursuant to the *OGCA* and leave them for the OWA. I am not suggesting that a regulator can strategically avoid the "sufficient certainty" test simply by delegating environmental work to an arm's length organization. I would not decide, as the Regulator urges, that the *Abitibi* test *always* requires that the environmental work be performed by the regulator itself. However, the OWA's true nature must be emphasized. There are strong grounds to conclude that, given the particular features of this regulatory context, the OWA is not the regulator.

148 The creation of the OWA was not an attempt by the Regulator to avoid the *BIA* order of priorities in bankruptcy. It is a non-profit organization with its own mandate and independent board of directors, and it operates as a financially independent entity pursuant to legally delegated authority. Although the OWA's board includes a representative of the Regulator and a representative of Alberta Environment and Parks, its independence is not in question. The OWA's 2014-2015 annual report indicates that five out of six voting directors represent industry. The OWA uses a risk assessment tool to prioritize when and how it will perform environmental work on the many hundreds of orphans in Alberta. There is no suggestion that the Regulator has any say in the order in which the OWA chooses to perform environmental work. The 2014-2015 annual report also states

that, since 1992, 87 percent of the money collected and invested to fund OWA activities has been provided by industry via the orphan levy. The Regulator, at para. 99 of its factum, hints obliquely that additional provincial or federal funding may be forthcoming in the future, but even if it materializes, it will be almost entirely in the form of loans. I cannot accept the suggestion in the dissenting reasons that the Regulator and the OWA are "inextricably intertwined" (para. 273).

149 Even assuming that the OWA's abandonment of Redwater's licensed assets could satisfy the "sufficient certainty" test, I agree with Martin J.A. that it is difficult to conclude that there is sufficient certainty that the OWA will in fact perform the abandonments. I also agree with her view that there is no certainty that a claim for reimbursement will be advanced should the OWA ultimately abandon the assets.

150 The dissenting reasons suggest that the facts of this appeal are more akin to those of *Northstar Aerospace Inc., Re*, 2013 ONCA 600, 8 C.B.R. (6th) 154 (Ont. C.A.), than to those of *Nortel* CA, arguing that the "sufficient certainty" test is satisfied because, as in *Northstar*, there is no purchaser to take on Redwater's assets and the debtor itself is insolvent, so only the OWA can perform the work. In my view, *Northstar* is easily distinguishable. In that case, the bankrupt had been voluntarily carrying out remediation prior to its bankruptcy. After it made its assignment into bankruptcy, the Ministry of the Environment ("MOE") took over the remediation activities itself, purporting to do so on a without prejudice basis. Jurianz J.A. found that the fact that the MOE had already undertaken remediation activities made it sufficiently certain that it would do so. As I will now demonstrate, the facts here are very different.

151 At the beginning of this litigation, the OWA estimated that it would take 10 to 12 years to get through the backlog of orphans. By 2015, that backlog was increasing rapidly, and it may well have continued to increase at the same or an even greater speed in the intervening years, as submitted by the Regulator. If anything, this suggests the possibility of an even larger backlog. There is no indication that the Renounced Assets would have a particularly high priority in the backlog. Even if the potential additional funding materializes, the Regulator submits that it will be a generation or more before the OWA can address its existing inventory of orphans.

152 The dissenting reasons rely on the chambers judge's conclusion that the OWA would "probably" perform the abandonments eventually, while downplaying the fact that he also concluded that this would not "necessarily [occur] within a definite timeframe" (paras. 261 and 278, citing the chambers judge's reasons, at para. 173). Given the most conservative timeline — the 10 years discussed by the chambers judge — it is difficult to predict anything occurring with sufficient certainty. Much could change within the next decade, both in terms of government policy and in terms of the willingness of those in the Alberta oil and gas industry to discharge environmental liabilities. This is not at all the same situation as in *Northstar*, in which the MOE had already commenced environmental work.

153 Perhaps more to the point, this lengthy timeline means that, should it ultimately perform the work, the OWA will not advance a claim for reimbursement. Advancement of a claim is an element of the test that is just as essential as performance of the work. The OWA itself has no ability to seek reimbursement of its costs from licensees and, although the costs of abandonment carried out by a person authorized by the Regulator constitute a debt payable to the Regulator under s. 30(5) of the OGCA, no evidence has been adduced that the Regulator has exercised its power to recover such costs in comparable cases. There is a good reason for this: the reality is that, by the time the OWA got around to abandoning any of Redwater's wells, the estate would be finalized and GTL long since discharged. In sum, the chambers judge erred in failing to consider whether the OWA can be treated as the regulator and in failing to appreciate that, even if it can, it is not sufficiently certain that the OWA will in fact perform the abandonments and advance a claim for reimbursement.

154 Accordingly, even if the Regulator had acted as a creditor in issuing the Abandonment Orders, it cannot be said with sufficient certainty that it would perform the abandonments and advance a claim for reimbursement.

(b) The Conditions for the Transfer of Licenses

155 I will deal briefly with the LMR conditions for the transfer of licences. Much of the foregoing analysis with regard to the Abandonment Orders also applies to these conditions. As noted by Martin J.A., the requirement of regulatory approval for

licence transfers is difficult to compare directly with the remediation orders at issue in *Abitibi*. However, this Court confirmed that the *Abitibi* test applies to a class of regulatory obligations that is broader than "orders" in *Moloney* , at paras. 54-55. The LMR conditions are a "non-monetary obligation" for the Redwater estate, since they must be satisfied before the Regulator will approve the transfer of any of Redwater's licences. However, it is notable that, even apart from the LMR conditions, licences are far from freely transferrable. The Regulator will not approve the transfer of licences where the transferee is not a licensee under the *OGCA*, the *Pipeline Act*, or both. The Regulator also reserves the right to reject a proposed transfer where it determines that the transfer is not in the public interest, such as where the transferee has outstanding compliance issues.

156 In a sense, the factors suggesting an absence of sufficient certainty are even stronger for the LMR requirements than for the Abandonment Orders. There is a debt enforcement scheme under the *OGCA* and the *Pipeline Act* in respect of abandonment, but there is no such scheme for the LMR requirements. The Regulator's refusal to approve licence transfers unless and until the LMR requirements have been satisfied does not give it a monetary claim against Redwater. It is true that compliance with the LMR requirements results in a reduction in the value of the bankrupt estate. However, as discussed earlier, not every obligation that diminishes the value of the bankrupt estate, and therefore the amount available to secured creditors, satisfies the "sufficient certainty" step. The question is not whether an obligation is intrinsically financial.

157 Compliance with the LMR conditions prior to the transfer of licences reflects the inherent value of the assets held by the bankrupt estate. Without licences, Redwater's *profits à prendre* are of limited value at best. All licences held by Redwater were received by it subject to the end-of-life obligations that would one day arise. These end-of-life obligations form a fundamental part of the value of the licensed assets, the same as if the associated costs had been paid up front. Having received the benefit of the Renounced Assets during the productive period of their life cycles, Redwater cannot now avoid the associated liabilities. This understanding is consistent with *Daishowa-Marubeni International Ltd. v. R.*, 2013 SCC 29, [2013] 2 S.C.R. 336 (S.C.C.) , which dealt with the statutory reforestation obligations of holders of forest tenures in Alberta. This Court unanimously held that the reforestation obligations were "a future cost embedded in the forest tenure that serves to depress the tenure's value at the time of sale" (para. 29).

158 The fact that regulatory requirements may cost money does not transform them into debt collection schemes. As noted by Martin J.A., licensing requirements predate bankruptcy and apply to all licensees regardless of solvency. GTL does not dispute the fact that Redwater's licences can be transferred only to other licensees nor that the Regulator retains the authority in appropriate situations to reject proposed transfers due to safety or compliance concerns. There is no difference between such conditions and the condition that the Regulator will not approve transfers where they would leave the requirement to satisfy end-of-life obligations unaddressed. All these regulatory conditions depress the value of the licensed assets. None of them creates a monetary claim in the Regulator's favour. Licensing requirements continue to exist during bankruptcy, and there is no reason why GTL cannot comply with them.

(3) Conclusion on the Abitibi test

159 Accordingly, the end-of-life obligations binding on GTL are not claims provable in the Redwater bankruptcy, so they do not conflict with the general priority scheme in the *BIA*. This is not a mere matter of form, but of substance. Requiring Redwater to pay for abandonment before distributing value to creditors does not disrupt the priority scheme of the *BIA*. In crafting the priority scheme set out in the *BIA*, Parliament intended to permit regulators to place a first charge on real property of a bankrupt affected by an environmental condition or damage in order to fund remediation (see s. 14.06(7)). Thus, the *BIA* explicitly contemplates that environmental regulators will extract value from the bankrupt's real property if that property is affected by an environmental condition or damage. Although the nature of property ownership in the Alberta oil and gas industry meant that s. 14.06(7) was unavailable to the Regulator, the Abandonment Orders and the LMR replicate s. 14.06(7)'s effect in this case. Furthermore, it is important to note that Redwater's only substantial assets were affected by an environmental condition or damage. Accordingly, the Abandonment Orders and LMR requirements did not seek to force Redwater to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage. In other words, recognizing that the Abandonment Orders and LMR requirements are not provable claims in this case does not interfere with the aims of the *BIA* — rather, it facilitates them.

160 Bankruptcy is not a licence to ignore rules, and insolvency professionals are bound by and must comply with valid provincial laws during bankruptcy. They must, for example, comply with non-monetary obligations that are binding on the bankrupt estate, that cannot be reduced to provable claims, and the effects of which do not conflict with the *BIA*, notwithstanding the consequences this may have for the bankrupt's secured creditors. The Abandonment Orders and the LMR requirements are based on valid provincial laws of general application — exactly the kind of valid provincial laws upon which the *BIA* is built. As noted in *Moloney* , the *BIA* is clear that "[t]he ownership of certain assets and the existence of particular liabilities depend upon provincial law" (para. 40). End-of-life obligations are imposed by valid provincial laws which define the contours of the bankrupt estate available for distribution.

161 Finally, as noted earlier, the *BIA*'s general purpose of facilitating financial rehabilitation is not relevant for a corporation such as Redwater. Corporations with insufficient assets to satisfy their creditors will never be discharged from bankruptcy because they cannot satisfy all their creditors' claims in full (BIA, s. 169(4)). Thus, no conflict with this purpose is caused by the conclusion that the end-of-life obligations binding Redwater are not provable claims.

IV. Conclusion

162 There is no conflict between Alberta's regulatory regime and the *BIA* requiring portions of the former to be rendered inoperative in the context of bankruptcy. Although GTL remains fully protected from personal liability by federal law, it cannot walk away from the environmental liabilities of the bankrupt estate by invoking s. 14.06(4). On a proper application of the *Abitibi* test, the Redwater estate must comply with ongoing environmental obligations that are not claims provable in bankruptcy.

163 Accordingly, the appeal is allowed. In *Alberta Energy Regulator v. Grant Thornton Limited*, 2017 ABCA 278, 57 Alta. L.R. (6th) 37 (Alta. C.A.), Wakeling J.A. declined to stay the precedential effect of the Court of Appeal's decision. As he noted, the interests of the Regulator itself were already protected. Pursuant to earlier orders of the Alberta courts, GTL had already sold or renounced all of Redwater's assets, and the sale proceeds were being held in trust. Accordingly, the Regulator's request for an order that the proceeds from the sale of Redwater's assets be used to address Redwater's end-of-life obligations is granted. Additionally, the chambers judge's declarations in paras. 3 and 5-16 of his order are set aside.

164 As the successful party in the appeal, the Regulator would normally be entitled to its costs. However, the Regulator specifically did not seek costs. Accordingly, there will be no order made as to costs.

***Côté J.* (dissenting) (Moldaver J. concurring):**

I. Introduction

165 Redwater Energy Corporation ("Redwater") is a bankrupt oil and gas company. Its estate principally consists of two types of properties or assets: valuable, producing oil wells and facilities that are still capable of generating revenue; and value-negative, non-producing assets, including depleted wells that are subject to onerous environmental liabilities. Redwater's receiver and trustee in bankruptcy, Grant Thornton Limited ("GTL"), purports to have disclaimed ownership of the non-producing assets. It did so in order to sell the valuable, producing wells separately — unencumbered by the liabilities attached to the disclaimed properties — and to distribute the proceeds of that sale to the estate's creditors.

166 However, Alberta law does not recognize GTL's disclaimers as enforceable. Shortly after GTL's appointment as receiver, the Alberta Energy Regulator ("AER") issued "Abandonment Orders" for the disclaimed assets, directing Redwater and its working interest participants to carry out environmental work on those properties. Specifically, the AER sought to have GTL "abandon" the non-producing properties, which meant to render the wells environmentally safe according to the AER's directives. It later notified GTL that it would refuse to approve any sale of Redwater's valuable assets unless GTL did one of three things: sell the disclaimed properties in a single package with the producing wells and facilities; complete the abandonment and reclamation work itself; or post security to cover the environmental liabilities associated with the disclaimed properties.

Court of Queen's Bench of Alberta

Citation: Quicksilver Resources Canada Inc (Re), 2018 ABQB 653

Date: 20180911
Docket: 1601 03113
Registry: Calgary

Court File Number	1601 03113
Court	Court of Queen's Bench of Alberta (Surrogate Matter)
Judicial Centre	Calgary
Estate Name	In the Matter of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended And in the Matter of the Compromise or Arrangement of Quicksilver Resources Canada Inc, 0942065 BC Ltd and 0942069 BC Ltd
Applicant (Plaintiff)	Quicksilver Resources Canada Inc.
Respondent (Defendant)	Rockyview Resources Inc.

Reasons for Judgment
of the
Honourable Mr. Justice C.M. Jones

I. Introduction

[1] Most people are familiar with the phrase "*caveat emptor*" or "buyer beware". It is a caution to purchasers of property to ensure that they are getting what they think they have paid for. This dispute arises from exactly the kind of problem to which the phrase refers.

[2] Quicksilver Resources Canada Inc. ("QRCI") held large natural gas reserves in Alberta and British Columbia, including approximately 126,500 acres in the Horn River basin in northeast BC. QRCI's business plan included the development of LNG export facilities on the BC coast. Its natural gas reserves in the Horn River basin were to supply this facility. It entered into mineral leases and surface leases with the Province of British Columbia and with various municipalities.

[3] In late 2011, QRCI became a partner in a partnership (the "Fortune Creek Partnership") with 0927530 BC Unlimited Liability Company. On December 23, 2011, QRCI entered into an agreement (the "Contribution Agreement") with that numbered company and the Fortune Creek Partnership pursuant to which QRCI agreed to contribute certain assets to the Fortune Creek Partnership. The contributed assets were described as follows in Schedule A to the Contribution Agreement:

> The "Assets" are set forth on Exhibit 1 (Maxhamish Pipeline), Exhibit 2 (Compression Assets) and shall include the following:
>
> (a) all permits, licenses, authorizations, surface rights (including easements, licenses of occupation and rights-of-way), and buildings, structures, appurtenances and tangible depreciable property situate thereon that are used or useful in connection with the operation of the Maxhamish Pipeline; but
>
> (b) specifically exclude any rights or interests in or relating to petroleum or natural gas or the production thereof, or in wells or wellsite facilities, or in the operation of the foregoing.

[4] In 2016, the Fortune Creek Partnership became insolvent and on June 30, 2016, MNP Ltd. (the "Trustee") was appointed as Trustee in Bankruptcy.

[5] Also in 2016, QRCI and two of its subsidiaries, 0942065 B.C. Ltd. and 0942069 B.C. Ltd., became insolvent. In an application dated March 8, 2016, brought pursuant to the ***Companies Creditors Arrangement Act***, R.S.C. 1985, c C-36 ("**CCAA**"), QRCI and its subsidiaries sought and obtained a stay of all proceedings and remedies taken or that might be taken against these three entities. This Court determined that QRCI, 0942065 B.C. Ltd. and 0942069 B.C. Ltd. were companies to which the CCAA applied and appointed FTI Consulting Canada Inc as Monitor of QRCI. The Monitor became actively involved with various entities engaged in attempts to monetize QRCI's assets.

[6] On March 21, 2016, QRCI and 1069130 BC Ltd, a subsidiary of Rockyview Resources Inc ("RRI"), entered into an asset purchase agreement (the "APA"). Notwithstanding that the named buyer was RRI's numbered subsidiary, in this decision, I refer to the APA as an agreement between QRCI and RRI because the pleadings, briefs and arguments in this matter frame the issue as a dispute between those two entities.

[7] As part of CCAA proceedings, the APA required the approval of this Court. The application for that approval came before me on April 22, 2016 and I granted the requested order (the "Approval and Vesting Order").

[8] A dispute subsequently arose between QRCI and RRI over specific assets that RRI claims were included in the sale to it. The assets in question (the "Disputed Assets") are as follows:

1. a metering station and building (the "Metering Station") located at the downstream or outlet end of the Maxhamish Pipeline, the location being legally described as a-59-A/094-O-14 in the Province of British Columbia;
2. a pig receiving station (the "Pig Receiver") at the same location; and
3. a BC Oil and Gas Commission ("OGC") Facility License for the Metering Station (the "Metering Station License").

[9] QRCI acknowledges that the APA contained reference to the Metering Station License but it asserts that this was an error. Further, it claims that the Metering Station and the Pig Receiver were conveyed to the Fortune Creek Partnership. QRCI seeks a declaration that RRI has no interest in the Metering Station, the Pig Receiver and the Metering Station License, or in associated surface rights agreements.

[10] RRI asserts that the Approval and Vesting Order vested title to the Disputed Assets in it.

II. Analysis

[11] Three questions require consideration. First, had QRCI divested itself of the Disputed Assets under the Contribution Agreement such that the principle *nemo dat quod non habet* applies and the Disputed Assets could not have been sold under the APA? Second, were the Disputed Assets included in the sale from QRCI to RRI under the terms of the APA? Third, does the Approval and Vesting Order have the effect of vesting title to the Disputed Assets in RRI notwithstanding any frailties in QRCI's title and/or the terms of the APA?

[12] As a preliminary matter, RRI asserts that QRCI has no standing to bring this application as it claims no ownership interest in the Disputed Assets. I am satisfied that QRCI does have standing by virtue of the orders granted in the CCAA proceedings. The initial order dated March 8, 2016 provides that "The Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder." Similarly, the Approval and Vesting Order provides that "The Applicants, the Purchaser, the Monitor and any other interested party, shall be at liberty to apply for further advice, assistance and directions as may be necessary in order to give full force and effect to the terms of this Order and to assist and aid the parties in closing the Transaction." As QRCI was an Applicant under both of these Orders, it had standing to bring the current application. I note also that the Trustee supports QRCI's application.

A. The Disputed Assets were transferred under the Contribution Agreement

[13] As noted above, the assets transferred pursuant to the Contribution Agreement included all buildings, structures and tangible depreciable property "used or useful in connection with the operation of the Maxhamish Pipeline". RRI asserts that the Metering Station was not situate on the Maxhamish Pipeline right of way and was not used or useful in connection with the operation of the Maxhamish Pipeline.

[14] In order to interpret the term "used or useful in connection with the operation of the Maxhamish Pipeline", I must take into account the context of natural gas transport; see ***Sattva Capital Corp v Creston Moly Corp***, 2014 SCC 53 at paras 56 ff.

[15] Having conveyed the Maxhamish Pipeline to the Fortune Creek Partnership, QRCI entered into an agreement (the "Gathering Agreement") to permit the transport of its natural gas through that pipeline from the Horn River Basin. The Gathering Agreement was attached as a schedule to the Contribution Agreement and defines "Gathering System" as follows:

> "Gathering System" means all real and personal property of every kind, nature, and description comprising the Maxhamish Pipeline operated by the Operator and as shown on Exhibit B, including but not limited to all pipelines, valves and metering facilities thereof.

[16] The Gathering Agreement also defines "Delivery Point" to mean:

> the point at which Gas is delivered from the Gathering System to (i) up to the Direction Change Date the Spectra Maxhamish North meter station located at a-5-a/94-0-14; and (ii) from and after the Direction Change Date, the inlet of the Fortune Creek compressor located at 66-A/94-O-15…

[17] As noted above, the legal description a-5-a/94-0-14 is the location of the Metering Station.

[18] RRI argues that the definition of Delivery Point distinguishes between the Gathering System and the Metering Station, suggesting that the Metering Station is not part of the Gathering System and therefore was not conveyed to the Fortune Creek Partnership pursuant to the Contribution Agreement.

[19] I do not accept RRI's argument. The Contribution Agreement neither defined "Gathering System" nor purported to convey the same. Accordingly, I do not believe the definition of Delivery Point in the Gathering Agreement should be allowed to overwhelm what would otherwise be a reasonable interpretation of assets conveyed to the Fortune Creek Partnership under the Contribution Agreement. The Metering Station is expressly contemplated in the definition of Delivery Point and I find that it was contemplated as "used or useful in connection with the operation of the Maxhamish Pipeline".

[20] RRI also argues that, even though gas in the Maxhamish Pipeline had to pass through the Metering Station before entering the Gathering System, the Metering Station did not actually move gas through the pipeline, as would, for example, a compressor. On that basis, it asserts that the Metering Station is not used or useful in the operation of the pipeline.

[21] Again, I disagree with RRI. Since the purpose of moving natural gas through a pipeline is to bring it to market and since natural gas is sold by volumetric measure, I find that a facility to measure volumetric flow through a pipeline would be useful to the operation of that pipeline. Indeed, the evidence satisfied me that not only was the Metering Station used in connection with the operation of the Maxhamish pipeline, its *only* use was in connection with the operation of that pipeline.

[22] Another of RRI's arguments is that the Metering Station is not an "Asset" within the meaning of the Contribution Agreement because it is not situate on the Maxhamish Pipeline right of way.

[23] This, in my view, is irrelevant. The definition of "Assets" in the Contribution Agreement includes licenses that are used or useful in the operation of the Maxhamish Pipeline. This, I find, includes the Metering Station License that permits the operation of technology designed to measure throughput from the pipeline to the Gathering System. The definition of "Assets" further includes buildings, structures and tangible property situate thereon. The Metering Station is situate on the land referenced in the Metering Station License. The same applies to the Pig Receiver, which is situate at the same location.

[24] More generally, RRI asserts that a description of an asset conveyed as "used or useful" is subjective and vague and is not a clear statement of what QRCI actually conveyed to the Fortune Creek Partnership.

[25] In this connection, QRCI proferred the affidavit evidence of Mr. Bob McGregor, its Vice President, Finance. Mr. McGregor averred that the Disputed Assets were integral to the Maxhamish Pipeline. RRI objected to Mr. McGregor's evidence as "opinion" based on his "interpretation" of the Contribution Agreement. RRI asserts that the evidence constitutes a legal opinion that Mr. McGregor is not qualified to give.

[26] I agree that, on its face, the "used or useful" articulation is not particularly helpful. I view Mr. McGregor's evidence as an attempt to describe what he considers to be the essential components of a pipeline that is used to move natural gas from the field to a distant gathering system. I am persuaded that his explanation of why a metering station might be considered useful in connection with the operation of such a pipeline is reasonable, based on common sense and decoupled from legal analysis.

[27] Moreover, I find that RRI could, and should, have resolved any uncertainty regarding what assets might have been transferred to the Fortune Creek Partnership under the Contribution Agreement as part of its due diligence required under the APA. I will expand upon this later in these Reasons, but for the moment, it will suffice to say that RRI knew of the Contribution Agreement, which was identified in the APA as an Excluded Contract. RRI could have addressed the risk of assets having been transferred by seeking a more precise description of the assets conveyed under the Contribution Agreement.

B. The Disputed Assets were not included in the Asset Purchase Agreement

[28] QRCI also argues that the Metering Station and Pig Receiver were not included in the APA and were not sold to RRI. Various provisions of the APA come into play in respect of this argument.

[29] Section 2.1, entitled "Purchase and Sale", provides that:

> Upon the terms and subject to the conditions of this Agreement, on the Closing Date, Seller shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, the Oil and Gas Assets to Buyer, and Buyer shall purchase the Oil and Gas Assets from Seller pursuant to the Approval and Vesting Order.

[30] "Oil and Gas Assets" are defined in section 1.1(jjj) to include QRCI's "right, title and interest" in and to other defined asset types, being "Petroleum and Natural Gas Rights", "Tangible Property" and "Miscellaneous Interests", discussed in detail below.

[31] Tangible Property is defined in section 1.1 (nnnn) to be the "Seller's Interest" in the Tangibles, which, under section 1.1 (oooo), means "the Facilities, and any and all tangible depreciable equipment and facilities that are located within, upon, or *in the immediate vicinity of the Lands*, or that are used or *intended to be used* in producing, gathering, processing, treating, dehydrating, *measuring*, transporting, making marketable or storing Petroleum Substances, excluding the Excluded Assets but including…" various subcategories of equipment. [Emphasis added.]

[32] Section 1.1 (nn) defines "Facilities" to be the facilities identified in Schedule A. Schedule A does not refer to either a metering station or a pig receiver.

[33] The Metering Station could be said to be used in measuring Petroleum Substances. Under section 1.1(oooo)(ii) the definition of Tangibles includes:

> …all equipment, machinery, fixtures and other tangible personal property and improvements located on, used or held for use or obtained in connection with the ownership or operation of the Lands…*including…meters*. [Emphasis added]

[34] The "Lands" are set out in Schedule A to the APA. QRCI argues that the Metering Station is 30 km away from the Lands and cannot be said to be "in the immediate vicinity of the Lands". It also asserts that a metering station 30 km away from its wells cannot be said to be used in connection with the ownership or operation of those lands.

[35] In my view, a metering station some 30 km away and decoupled from the wells and other facilities cannot reasonably be said to relate directly to the operation of the Lands. Rather, the Metering Station was used in the operation of the Maxhamish Pipeline.

[36] As set out above, the definition of Tangibles excludes the Excluded Assets set out in Schedule C. RRI asserts that since the Metering Station was not included in the Excluded Assets schedule, it must have been included in the conveyance by QRCI. Presumably, it would make the same argument in relation to the Pig Receiver.

[37] Failure expressly to exclude an asset does not necessarily imply its inclusion. Typically, a seller identifies what it is selling with somewhat general language and then excludes specific items. It is not surprising that QRCI would not have expressly excluded the Metering Station and the Pig Receiver, given that it was of the view that it no longer owned those assets.

[38] Accordingly, I find that neither the Metering Station nor the Pig Receiver was conveyed by the APA.

[39] QRCI acknowledges that the Metering Station License was contemplated by the APA, but takes the position that this was an error. It again refers to the evidence of Mr. McGregor, who indicated in his affidavit that the Metering Station License was "incorrectly and erroneously included in a schedule of assets" in the APA. RRI again objects to this evidence, arguing that it is merely Mr. McGregor's opinion based on his interpretation of the Contribution Agreement.

[40] In my view, Mr. McGregor's evidence surrounding the alleged mistake seems candid and plausible. It also seems to me to be consistent with my analysis above respecting the Contribution Agreement. In any event, however, I am not persuaded that the Metering Station License formed part of the assets transferred under the APA.

[41] Schedule C provides at paragraph (k) that Excluded Assets include:

> (k) all Licenses and pending applications therefore to the extent *related to* any other Excluded Assets or the Excluded Liabilities [Emphasis added]

[42] Paragraph (q) provides that Excluded Assets include certain contracts, referred to as Excluded Contracts. Subparagraph (q)(iv) incorporates as an Excluded Contract:

> (iv) Contribution Agreement dated December 23, 2011 with Seller, Fortune Creek Gathering and Processing Partnership and 0927530 B.C. Unlimited Liability Company, as amended from time to time

[43] The Contribution Agreement is an Excluded Contract and therefore an Excluded Asset. The Metering Station License would appear to be a license *related to* that Excluded Asset, making it an Excluded Asset also.

[44] Alternatively, as discussed above, QRCI takes the position that it contributed the Metering Station to the Fortune Creek Partnership pursuant to the Contribution Agreement. It asserts that, under British Columbia law, the Metering Station License could not be transferred and that, therefore, it holds bare legal title to the Metering Station License in trust for the Fortune Creek Partnership. I note that section 4.1 of the Contribution Agreement provides as follows:

> 4.1 Declaration of Trust
>
> QRCI hereby acknowledges to, declares and covenants with the Partnership that, in respect of all of the Assets which are held or registered in the name of QRCI, or in respect of which QRCI holds legal title, or any residual, contingent or future interest, QRCI as and from the Effective Time, stands possessed of and holds such Assets and all receipts, proceeds or products from the Assets in trust for the exclusive benefit of the Partnership and QRCI shall only deal with such Assets as instructed by the Partnership. …

[45] QRCI also notes that section 1.1(gggg) of the APA sets out the following definition of "Seller's Interest": all of Seller's right, interest, title and estate, whether absolute or contingent, *legal or beneficial*. [Emphasis added.] QRCI alleges that it holds only bare legal title to the Metering Station License and that only such bare legal title could have been transferred to RRI under the APA.

[46] The APA provides that QRCI conveyed the "Seller's Interest" in the described assets to RRI. If the "Seller's Interest" was limited to bare legal title, then that is all that could be conveyed. Therefore, if I am wrong in my conclusion that the Metering Station License is an Excluded Asset that was not conveyed under the APA, then I find that QRCI held, and conveyed to RRI, only bare legal title to the Metering Station License.

[47] RRI argues that it intended to purchase all of QRCI's assets in British Columbia and asks how it could have been expected to know what assets QCRI might have conveyed to the Fortune Creek Partnership. I have little sympathy for this argument. The APA does not state that QCRI purports to sell all of its remaining assets in British Columbia, nor does it provide that it is RRI's intention to acquire all such assets. Even if QRCI stated that it was selling all of its remaining British Columbia assets to RRI, it would be necessary to determine what assets remained to be sold. In my view, RRI should have conducted sufficient due diligence to allow it to make that determination.

[48] In section 5.12 of the APA, QRCI states, *inter alia*, that it "does not make any representation or warranty, express or implied, of any kind, at law or in equity, with respect to … the title of Seller to the Oil and Gas Assets". Section 5.12 also states that RRI is relying on its own investigations: "Buyer acknowledges and confirms that it is relying on its own investigations concerning the Oil and Gas Assets and it has not relied on advice from Seller or its Representatives with respect to the matters specifically enumerated in the immediately preceding paragraphs in connection with the purchase of the Oil and Gas Assets pursuant hereto. Buyer further acknowledges and agrees that it is acquiring the Oil and Gas Assets on an "as is, where is" basis." In my view, none of the other representations or warranties in the APA qualifies QRCI's refutation of any assertion that it holds title to the assets it purports to sell.

[49] RRI appears, by virtue of section 5.12, to have foregone any right to hold QCRI accountable for title defects and to have assumed sole responsibility for ascertaining what QCRI did or did not have the right to sell. I do not view QRCI as having a duty to alert RRI to issues relating to ownership of assets. Further, if it was RRI's intention to purchase the Disputed Assets, it could have insisted that those items be expressly included.

[50] I also note that section 13.6 of the APA is an "entire agreement clause" stating that the APA represents a complete and exclusive statement of the terms of the agreements between QRCI and RRI. This seems to me to preclude RRI from relying on any other alleged representations by QRCI.

[51] Taking all of the foregoing into account, I find that neither the Metering Station nor the Pig Receiver was conveyed to RRI by the APA. I am of the view that the Metering Station License fell within the definition of Excluded Assets and therefore also was not conveyed to RRI. If I am wrong in that conclusion, I find that QRCI held only bare legal title to the Metering Station License and, therefore, only that bare legal title was conveyed to RRI.

C. The Vesting Order was limited to QRCI's interest in the Disputed Assets

[52] As noted above, on April 22, 2016, I granted the Approval and Vesting Order. That Order was contemplated by section 2.1 of the APA which provides, *inter alia*, that "Buyer shall purchase the Oil and Gas assets from Seller pursuant to the Approval and Vesting Order." This application raises the question of the role of the Approval and Vesting Order in the sales process.

[53] The Approval and Vesting Order approves the APA and provides that, upon delivery of a necessary certificate, "all of [QRCI's] right, title and interest in and to the Purchased Assets shall vest absolutely, exclusively, entirely and forever in [RRI], free and clear of and from any and all rights, claims, titles, interests" and other claims. RRI argues that the Approval and Vesting Order operates to vest in it title to the Disputed Assets regardless of any prior conveyances under the Contribution Agreement.

[54] With increasing use by courts of CCAA orders to vest off third party claims to an insolvent's assets, it becomes important to consider to what extent such orders can be used to abrogate such a third party's claim to title to the assets.

[55] The objective of the Approval and Vesting Order is to expunge claims to QRCI's title and to allow "for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser". RRI argues that it is important to provide purchasers with certainty and security. Otherwise, CCAA proceedings would be impaired and it would be more difficult to arrive at an arrangement fair to all stakeholders. It asserts that expropriating a third party's title

to assets conveyed and transferring that title by Court order to a purchaser is a fair price to pay to achieve that objective.

[56] I cannot agree that this approach would be desirable from a policy perspective. In my view, such an approach would:

(a) reward inadequate due diligence on the part of persons responsible for preparing accurate descriptions of assets conveyed;
(b) undermine certainty and security by vesting with the Court far-reaching powers to restructure economic relationships and expectations in ways never contemplated by parties to commercial arrangements;
(c) render a provision such as section 5.12 of the APA meaningless by relieving the buyer of the risk it expressly agreed to assume; and
(d) be inconsistent with the fairness intended by the CCAA because a non-party to proceedings may find its property summarily expropriated.

[57] Perhaps most troubling from the Court's perspective is the inference that the Court is somehow engaged in the due diligence process of confirming title to assets purported to be sold. I would suggest that it would be an abuse of CCAA orders to interpret them as the Court's confirmation that title the seller does not possess may be vested in the buyer free of claims to ownership by the true owner. The better interpretation is that a CCAA order may vest off certain claims against title, but does not create title.

[58] In any event, I am satisfied that the Approval and Vesting Order, by its terms, was limited to QRCI's interest in the Disputed Assets. Clause 3 of the Approval and Vesting Order purported to vest in RRI "all of [QRCI's] right, title and interest in and to" the assets being conveyed. It does not purport to confer on RRI title to assets that did not belong to QRCI. The APA and the Approval and Vesting Order therefore work in harmony and contemplate a conveyance of no better title to the assets than QRCI had. Claims to be expunged do not include third party title to assets previously conveyed.

[59] Accordingly, as the Metering Station and Pig Receiver were not owned by QRCI and were not conveyed to RRI under the APA, the Approval and Vesting Order does not apply to those assets. The same is true of the Metering Station License if I am correct in my conclusion that it was an Excluded Asset that was not conveyed under the APA. If the Metering Station License was not an Excluded Asset, then the APA conveyed bare legal title to it and the Approval and Vesting Order confirmed the conveyance of that bare legal title.

III. Relief

[60] QRCI seeks a declaration that RRI has no right, title or interest in the Disputed Assets. With respect to the Metering Station and the Pig Receiver, I am prepared to grant that declaration.

[61] With respect to the Metering Station License, if I am correct in my conclusion that it is an Excluded Asset under the APA, then I also grant a declaration that RRI has no right, title or interest in it.

[62] In the event that I am wrong in concluding that the Metering Station License is an Excluded Asset, QRCI asks that I grant an order rectifying the APA to remove from it reference

to the Metering Station License. I note that rectification is an equitable remedy within the discretion of the Court and, for the reasons that follow, I decline to grant it.

[63] Historically, rectification was available only in cases of mutual mistake. More recently, however, the Supreme Court of Canada has made clear that, in appropriate circumstances, rectification may be granted to relieve a unilateral mistake; see ***Performance Industries Ltd v Sylvan Lake Golf & Tennis Club Ltd***, 2002 SCC 19 and ***Canada (Attorney General) v Fairmont Hotels Inc***, 2016 SCC 56.

[64] QRCI asserts that this is a case of mutual mistake in that QRCI did not think it was selling the Disputed Assets and RRI thought it was. I think the mistake is more properly characterized as unilateral on QRCI's part, but in my view, nothing turns on that distinction.

[65] The Supreme Court held in both ***Performance Industries*** and ***Fairmont Hotels*** that rectification is to be used "with great caution", an admonition that recently was echoed by our Court of Appeal in ***Harvest Operations Corp v Canada (Attorney General)***, 2017 ABCA 393. The Court will exercise its discretion only if four conditions precedent articulated by the Supreme Court in ***Performance Industries*** are satisfied. Those conditions may be summarized as follows:

1. There must be a prior oral agreement inconsistent with the instrument to be rectified.
2. Permitting the respondent to take advantage of the error would amount to "fraud or the equivalent of fraud".
3. The applicant must show the precise form in which the written instrument can be made to express the prior intention.
4. All of the foregoing must be established by "convincing proof".

[66] QRCI has failed to meet the second condition precedent. While I am satisfied that RRI was remiss in its due diligence, there is nothing in its conduct that would rise to the level of fraud or its equivalent. Consequently, if bare legal title to the Metering Station License was conveyed, I decline to rectify the APA to obviate that result.

[67] This would leave RRI holding bare legal title to the Metering Station License, an outcome that is desirable to neither party. This difficulty may be resolved by reference to the nature of bare legal title. In ***Lemoine v Smashnuk***, 2008 ABQB 193 at para 42, Moen J made these comments:

> …A "bare trust" is a trust where the trustee holds property without any duty to perform except to convey it to the beneficiary or beneficiaries, upon demand. The definition of a bare, naked or simple trust assumes two things: (1) that the beneficiary is able to call for the property on demand; and (2) either that no active duties were ever required by the settlor or that the active duties have been performed (*Waters' Law of Trusts in Canada*, 3rd ed., D.W.M. Waters, Toronto: Thomson Carswell, 2005, at p. 32).

[68] If RRI holds bare legal title to the Metering Station License, its only duty is to convey the same to the beneficial owner upon demand. QRCI has provided evidence, in the form of Mr. McGregor's affidavit, that the Trustee in Bankruptcy for the Fortune Creek Partnership, as beneficial owner of the Metering Station License has made a demand for its transfer. I accept that evidence and am prepared to grant a declaration that if bare legal title to the Metering

Station License was conveyed to RRI by the APA, RRI is compelled to transfer it to the Trustee in Bankruptcy or its nominee.

[69] Counsel asserted that RRI has paid property taxes in respect of some of the Disputed Assets, which would not be its obligation in light of my conclusions regarding ownership. Accordingly, I will remain seized of this matter and RRI is at liberty to make a further application to address any possible overpayment.

[70] The parties may speak to costs.

Heard on the 1st day of March, 2017.
Dated at the City of Calgary, Alberta this 11th day of September, 2018.

C.M. Jones
J.C.Q.B.A.

Appearances:

Chris Simard and Aaron Rankin
Bennett Jones LLP
for the Applicant, Quicksilver Resources Canada Inc.

Steven Leitl
Norton Rose Fulbright Canada LLP
for the Respondent, Rockyview Resources Inc.

G. Brian Davison, QC
DLA Piper (Canada) LLP
for the Trustee in Bankruptcy

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *8640025 Canada Inc. (Re),*
2017 BCCA 303

Date: 20170817
Dockets: CA44619; CA44620

Docket: CA44619

In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

In the Matter of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as Amended

In the Matter of a Plan of Compromise and Arrangement of 8640025 Canada Inc. and Teliphone Data Centers Inc.

Between:

8640025 Canada Inc. and Teliphone Data Centers Inc.

Respondents
(Petitioners)

And

TNW Networks Corp.

Appellant
(Respondent)

And

Ernst & Young Inc., Court Appointed Monitor for the Petitioners

Respondent

Docket: CA44620

In the Matter of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

In the Matter of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as Amended

In the Matter of a Plan of Compromise and Arrangement of 8640025 Canada Inc. and Teliphone Data Centers Inc.

Between:

8640025 Canada Inc. and Teliphone Data Centers Inc.

Respondents
(Petitioners)

And

Teliphone Corp.

Appellant
(Respondent)

And

Ernst & Young Inc., Court Appointed Monitor for the Petitioners

Respondent

Before: The Honourable Mr. Justice Goepel
The Honourable Mr. Justice Fitch
The Honourable Mr. Justice Hunter

On appeal from: An order of the Supreme Court of British Columbia, dated July 18, 2017 (*8640025 Canada Inc. and Teliphone Data Centers Inc. (Re)*, 2017 BCSC 1291, Vancouver Docket No. S1610905).

Oral Reasons for Judgment

Counsel for the Appellant (CA44619), TNW Networks Corp.:	G.F. Gregory
Counsel for the Appellant (CA44620), Teliphone Corp.:	C.R. Clarke, Q.C.
Appearing for 8640025 Canada Inc. and Teliphone Navigata-Western Inc.:	Sandeep Panesar
Counsel for the Respondent, Ernst & Young Inc.:	S.F. Collins
Counsel for the Bank of Nova Scotia:	H.L. Williams
Counsel for TELUS Communications:	J.R. Sandrelli
Counsel for Cascade Divide Enterprises:	D.F. Hepburn

Place and Date of Hearing:	Vancouver, British Columbia August 14, 2017
Place and Date of Judgment:	Vancouver, British Columbia August 17, 2017

Summary:

An order for sale of assets of a business made pursuant to s. 36 of the Companies' Creditors Arrangement Act ("CCAA") is challenged on the basis that some of the assets authorized to be sold were assets of entities not before the Court in the CCAA *proceeding. Held: appeal allowed. The Court did not have the jurisdiction under the* CCAA *to authorize the sale of assets of entities that had not brought themselves within the CCAA proceeding.*

[1] **HUNTER J.A.**: These appeals from an order made under the *Companies' Creditors Arrangement Act* ("*CCAA*") come to the Court with leave.

[2] The order under appeal authorizes a sale of certain assets pursuant to s. 36 of the *CCAA*. The appellants argue that some of the assets to be sold under this authorization are owned by parties other than the companies that are subject to the *CCAA* proceeding. This, they say, goes beyond the jurisdiction of the *CCAA* court. If that is a correct characterization of the effect of the order under appeal, the issue is one of law and the standard of review is one of correctness.

[3] The respondents' position is that the intent of the asset purchase agreement is to restrict the sale to the Petitioners' assets, but if some of the assets do in fact belong to other entities, the Monitor is nonetheless entitled to sell them with the Court's approval. The Monitor relies on orders of the *CCAA* court leading up to the sale approval and the broad discretion of a *CCAA* court under s. 11 of the *CCAA*.

[4] Given the need for a decision on this appeal in a compressed timeline, I will not review all of the background to the order under appeal, but a brief review of the proceedings is necessary to provide context both for the order for sale and some of the arguments raised by the parties in this appeal.

[5] These proceedings commenced on November 25, 2016, when 8640025 Canada Inc., which I will refer to as 864, and Teliphone Data Centres Inc. filed a petition pursuant to the *CCAA* seeking the protection of that legislative regime in order to file a plan of compromise or arrangement. A third company, Teliphone

Canada Corp., was subsequently added as a Petitioner. I will refer to these three companies as the Petitioners.

[6] The Petitioners are members of a group of telecommunication companies, referred to as the TNW Group of Companies. The appellants are also part of the TNW Group of Companies, although neither of the appellants is a petitioner in these proceedings.

[7] The TNW Group sells telephone and long distance services to business and residential customers. They currently utilize the facilities of Telus Communications Company and Bell Canada, although Telus has served notice of its intention to disconnect the TNW Group for failure to meet their financial obligations to Telus.

[8] On November 30, 2016, an amended and restated initial order was made by the Supreme Court of British Columbia pursuant to the *CCAA*. The order stated that the petitioners were companies to which the *CCAA* applies, thereby founding jurisdiction. The order went on to extend the stay of proceedings which had been issued a few days earlier and appointed a monitor to monitor the business and financial affairs of the Petitioners.

[9] On December 21, 2016, a further order was made replacing the initial monitor with Ernst & Young, further extending the stay, and containing the following direction:

> 5. The Monitor is authorised and directed as part of the Petitioners restructuring to carry out a process for the solicitation of all offers to invest in the Petitioners or to purchase all or part of the Petitioners' assets, whether as a going concern or otherwise… In determining the Solicitation Process and Solicitation Plan, the Monitor will review and evaluate the assets of the Petitioners, and the costs and values associated with the Business.

[10] The distinction between the assets of the Petitioners and those associated with the Business has emerged as the most difficult challenge for the Monitor in this proceeding. The evidence was that all of the companies in the group operated seamlessly together as one business. The companies in the TNW Group use the same facilities and the degree of integration is so great that financial statements of

most of the companies in the Group are prepared on a consolidated basis. It quickly became apparent that the integrated nature of the business of the TNW Group would create difficulties in separating out what assets belonged to the Petitioners and what assets used in the Petitioners' Business were owned by other parties not within the *CCAA* process.

[11] To address this problem, in January of 2017, six of the secured creditors of the Petitioners applied to the *CCAA* judge for an order adding three parties, TNW Networks Corp. and Teliphone Corp., (who are appellants in this appeal) and a subsidiary of Teliphone Corp. called Teliphone Canada Corp., as petitioners to the *CCAA* proceedings. TNW Networks Corp. was identified as a critical part of the operations of the TNW Group. Teliphone Corp. and Teliphone Canada Corp. were characterized as being involved in the Petitioners' business.

[12] This application was dismissed by Mr. Justice Affleck with reasons indexed as 2017 BCSC 303. The reasons for judgment of Affleck J. are significant in light of the issue before this Court.

[13] Mr. Justice Affleck began his analysis by reference to s. 3(1) of the *CCAA* in these terms:

> [24] Subsection 3(1) on its face makes the *Act* applicable to a company which is a debtor or affiliated debtor company. A debtor company is defined in s. 2 of the *Act* as a company that is bankrupt or insolvent, has committed an act of bankruptcy, or has made an assignment in bankruptcy or is in the course of being wound up because of insolvency.
>
> [25] The record before me does not demonstrate that the proposed petitioners are insolvent. …

[14] He described s. 3 as a gateway to applying the *Act* to an eligible company, and held that since the proposed petitioners were neither insolvent debtors nor affiliated insolvent debtors, the *Act* was not applicable to them.

[15] He also observed that:

> [52] … If the prospective petitioners could be added, despite their opposition, the court would then become engaged in reorganizing their businesses, perhaps even selling them, and probably imposing the stay

> contemplated by s. 11.02(2) of the *Act*. I do not accept that *Act* is intended to be applied to a company that objects to coming under its constraints.
>
> [Emphasis added.]

[16] No further attempt was made to bring Teliphone Corp. into the *CCAA* proceedings. The appellant Teliphone Corp. relies in part on this judgment, which was not appealed, for the proposition that the *CCAA* court does not have jurisdiction over it or its assets in the *CCAA* proceeding.

[17] Further efforts were made, however, to bring TNW Networks Corp. into the proceeding, primarily because it emerged that the customer contracts, which were a significant asset of the Petitioners' business, had been assigned to TNW Networks Corp. prior to the initial *CCAA* order.

[18] Following further applications and cross-applications, on March 21, 2017, the appellant TNW Networks Corp. provided the Monitor with an Undertaking and Acknowledgement that assigned to the Monitor "all of the assets of TNW Networks Corp. that are used in or necessary for the business of the petitioners, as determined by the Monitor, including without limitation, all customer agreements of the Petitioners and all material supplier contracts, insofar as they are held by TNWN."

[19] On April 6, 2017, Mr. Justice Bowden made a further order providing a detailed process by which the Monitor was authorized to determine which assets of TNW Networks Corp. were derived from the property of the Petitioners and which were not. The Monitor was also given powers to market the property of the Petitioners, including any property of TNW Networks Corp. derived from the property of the Petitioners.

[20] The text of this order is of some consequence to the issues in this appeal. Paragraph 6 is relied on by the Monitor as providing authority for the asset purchase agreement that was ultimately negotiated, and was also referenced by the chambers judge who approved the agreement. Paragraph 6 reads as follows:

> Forthwith, the Monitor shall review, inventory and otherwise investigate the affairs and assets of Networks, and shall determine what Property (as defined below) of Networks was not derived directly or indirectly from the Property of the Petitioners, their subsidiaries, or any other entitles subject to the Applicants' security (the "Networks Property"), and report the same to the Court. Any Property of Networks which the Monitor is unable to determine the origin of shall not be Networks Property, and for greater certainty, until determined as set out herein, none of the Property shall be Networks Property. Any party may challenge the determination of what constitutes Networks Property by application to this Court within 10 business days following the Monitor's report on the same and which matter shall be determined in this proceeding on a summary basis.

[21] Networks is defined in the order as TNW Networks Corp.

[22] The other part of the April 6 order of relevance to this appeal is para. 7(l) which reads in relevant part as follows:

> The Monitor is hereby empowered and authorized, but not obligated, to act at once in respect of all of the assets and undertakings of the Companies (the "Property") and, without in any way limiting the generality of the foregoing, the Monitor is hereby empowered and authorized … to sell, convey, transfer, lease or assign the Property (other than the Networks property) or any part or parts thereof … with the approval of this Court …

[23] Companies is defined collectively in the order as TNW Networks Corp. and the Petitioners.

[24] The effect of these provisions is to provide the Monitor with the authority to sell, subject to the approval of the court, all of the assets of the Petitioners, together with those assets of TNW Networks Corp. that are not excluded by the process established in para. 6. Nothing in the April 6 order authorizes the Monitor to sell any other assets.

[25] In the end, no plan of arrangement was presented to the creditors for approval. Having resolved the problem of the integration of operations between the Petitioners and TNW Networks Corp. through the Undertaking and the April 6 order, the Monitor focussed his efforts on a sale of the Petitioners' assets as a going concern.

[26] The problem of separating out the assets of the Petitioners from other assets of the other companies in the TNW Group remained. On June 7, 2017, if not before, the Monitor became aware that several of these companies were asserting ownership in some of the assets used in the Business of the Petitioners.

[27] In his 7th Report to the Court, issued June 27, 2017, the Monitor outlined the steps he had taken to determine the scope of the Petitioner's assets:

> 111. As indicated in the response of the Monitor's legal counsel to the May 27 Letter, the Monitor, on numerous occasions and over several months, requested of Mr. Laliberte a list of property, including assets, customer agreements, property, plant and equipment or otherwise which were being used in the Business; but were not property of the Petitioners or TWN Networks.
>
> 112. On June 7, 2017, Mr. Laliberte presented the Monitor with a report (the "**Asset Report**") which purported to outline Teliphone Corp. and subsidiaries' interest in various property in the possession of the Petitioners and TNW Networks. …
>
> 113. The Asset Report provided by Mr. Laliberte provides an overview of a series of acquisitions made by Teliphone Corp., the Petitioners and other related parties that sought to segregate the ownership of assets and customer relationships between the various legal entities that were party to those transactions.
>
> …
>
> 115. Notably, the Asset Report asserts that various property in the possession of the Petitioners and TNW Networks are owned by legal entities other than the Petitioners (the "**Outside Property**"), including:
>
> a) 101234472 Saskatchewan Ltd.;
>
> b) Investel Capital Corporation (the parent company of the Petitioners);
>
> c) Teliphone Corp. (a related company); and
>
> d) 8583498 Canada Ltd. (a related company);

[28] The Monitor expressed some skepticism as to the accuracy of this report, but pointed out the difficulty in determining ownership of the assets used in the Petitioners' Business:

> 119. The Monitor is of the view that the assets of the Business are highly integrated in nature and there is no meaningful way to segregate the assets and customer relationships of the Business to various legal entities without a major examination, which would be extremely costly and would likely

> conclude that all of the assets, at minimum, are subject to the security interests of the Secured Creditors. …
>
> 120. The complex organizational structure of the Petitioners and the use of different entities makes it extremely difficult to trace the ownership of assets. …

[29] The Monitor went on to note that the secured creditors had advised that they held security over the entities identified as the owners of the Outside Property.

[30] The Monitor reported on the progress of the Solicitation Plan as follows:

> 129. The Monitor received seven (7) LOIs [Letters of Intent] from Prospective Offerors (collectively, the "**Offerors**") seeking to purchase the assets of the Business. No LOIs were received from parties interested in making an investment in the Business or in the Petitioners.
>
> [Emphasis added.]

[31] On June 28, 2017, an affidavit was filed by Lawry Trevor-Deutsch, the former President of Teliphone Corp. providing details of the assets used in the Petitioners' Business that he asserted belonged to Teliphone Corp. and its subsidiaries, and also details of additional assets that were said to belong to other companies, primarily affiliates of the Petitioners. Copies of source documents substantiating the ownership of these assets were provided as exhibits to this affidavit.

[32] At this point, time was becoming very tight. The stay of proceedings that was protecting the Petitioners was set to expire July 14, 2017. The question of what assets were available for a going concern sale was unresolved.

[33] On July 7, 2017, the Monitor issued his 8th Report to the Court in which he advised the Court of an Asset Purchase Agreement or APA that had been negotiated, subject to the Court's approval, with an affiliate of the Distributel Group of Companies. Once again the subject matter of the sale was referred to as the assets of the Business. The Monitor specifically referred to the ownership dispute in these terms:

> 29. The purchase price (the "Distributel Purchase Price") payable by Distributel for all of the assets of the Business, wherever located, including accounts receivable and other current assets, property plant and equipment, other network assets and all customer agreements and relationships (the

> "Purchased Assets") include assets that the Shareholder Representatives assert are assets of other entities, …

[34] He also commented briefly on the assertion of ownership of assets by Teliphone Corp. in the Trevor-Deutsch affidavit in these terms:

> 39. … (f) … The Monitor has reviewed Exhibit "Y" to the Trevor-Deutsch Affidavit including the categories of assets that are purportedly owned by Teliphone Corp. and has prepared a schedule attached as **Appendix "H"** to this report wherein the Monitor provides its view that those assets were either: (i) acquired directly by 864 in 2013; (ii) owned by one of the Petitioners subsidiaries; (iii) are subject to Secured Creditor's security; or (iv) do not form part of the Purchased Assets.

[35] The Monitor maintained this position before the chambers judge and in his submissions before us. The effect of this position is to assert that even if the assets that are part of the Purchased Assets were not assets of the Petitioners, they may be transferred if they were assets of one of the petitioners' subsidiaries or if the assets are subject to the Secured Creditors security, Secured Creditors being the secured creditors of the Petitioners.

[36] An application was then made to approve the Distributel APA, returnable July 13, 2017. The appellants opposed approval of the sale on the ground that the assets that were subject to the sale included assets belonging to Teliphone Corp. or other companies not part of the *CCAA* process, and accordingly the *CCAA* court did not have jurisdiction to approve the terms of the sale in the Distributel APA. A second ground was advanced relating to the process followed by the Monitor.

[37] The status of the proceedings at the time of the July 13 application was described by the chambers judge in these terms:

> [7] … At this stage, the decision reduces itself to the approval of this one sale, or an alternative outcome, which is difficult to know or define. There is no evidentiary base from which to conclude that the Respondents are in a position to carry on. They are about to run out of money and have no credit. Their business relationships with those they must deal with to carry on business, Telus being a prime example, are damaged beyond repair. The Distributel deal, on the other hand, can likely save the employment of dozens of employees, and allow a business to carry on. I do not see a viable alternative to the requested orders.

[38] I agree with the practical wisdom of these comments, and if what was being sold was the assets of the Petitioners I would agree with the disposition approved by the chambers judge. The impediment to this disposition, however, is the dispute over the ownership of the assets that the Monitor had been unable to resolve.

[39] The chambers judge addressed this jurisdictional question in these terms:

> [19] The Respondents also argue that the Monitor lacked the authority to sell the assets which are the subject of the Distributel agreement. However, para. 6, in one of this Court's orders made on April 26, 2017, contains a presumption against the assets being the property of an entity whose assets the Monitor could not sell. Moreover, the Monitor further addressed the asset question in its seventh report, dated June 27, 2017, at paragraphs 110–123. I quote here paragraphs 122 and 123:
>
> > Based on the foregoing, the Monitor is of the view that it has appropriately and in a cost effective manner carried out the responsibilities pursuant to Paragraph 6 of the Enhanced Monitor Powers Order that directed the Monitor to review, inventory and otherwise investigate the assets of TNW Networks, and determine which assets of TNW Networks, if any, was not derived directly or indirectly from the Property of the Petitioners, their subsidiaries, or any other entities subject to the security interests of the Secured Creditors.
> >
> > If this Honourable Court requires a more in-depth review the Monitor will be required to undertake a full scale forensic examination of the underlying transactions and sourcing of funds. The Monitor is prepared to undertake such a review, but notes that a review of this nature would take significant time and the professional costs included the Seventh Report Forecast does not include a provision for such an undertaking.
>
> [20] In my view, the further work offered by the Monitor in paragraph 123, quoted above, would be wasteful of time and money, and the Court does not require it. The ownership and transfer of assets among the group of companies owned and controlled by the Respondents was unusually complex. I am satisfied from Mr. Collins' detailed factual submissions on the first day of the hearing that the Monitor had the required interest in the sale assets to be able to sell them. I also note Appendix A to the Monitor's eighth report, dated July 7, 2017, which contains an acknowledgment and undertaking on behalf of the Respondents, granting the Monitor an irrevocable assignment of the shares in TNW Networks Corp. and the assets of TNWN as determined by the Monitor.

[40] After commenting on the second ground advanced by the appellants, the chambers judge approved the sale in the terms sought.

[41] In considering the issues before this Court, I note that the chambers judge who heard the application for approval of the APA was the third judge to hear and determine applications in this *CCAA* proceeding. It is unclear how much of the voluminous material presented to us was presented and explained to the chambers judge hearing the application for approval of the sale. I recognize that trial scheduling for an ongoing matter such as this can be very complicated, but if possible, given the complexity of proceedings such as this it would be desirable to have a single judge supervise the proceedings throughout.

[42] On this appeal, the appellants renew their jurisdictional argument that the *CCAA* court did not have the authority to approve this APA because some of the assets included in the sale belonged to parties not within the *CCAA* proceedings. The threshold question on this appeal is whether the APA does in fact purport to sell assets belonging to Teliphone Corp. or the other parties not before the Court. In these reasons I will refer to these assets as third party assets.

[43] The July 18 order on its face does not purport to sell third party assets, but the APA approved by the order does contain asset schedules including both physical assets and intellectual property which the appellants say demonstrably include third party assets. The order approving the sale also includes a provision whereby the "ownership and other adverse claims" of Teliphone Corp. in addition to seven other entities not before the Court are "expunged and discharged".

[44] Because of the basis by which the Monitor sought to support his authority to sell the assets listed in the APA, we do not have the benefit of a finding of fact by the chambers judge on the question of whether the assets to be conveyed in the APA include third party assets. It will be recalled that the Monitor based his authority on the April 6 order and the proposition previously noted that if the assets were assets of the Petitioners' subsidiaries or were subject to the security of the Petitioners' Secured Creditors, that was sufficient to found authority to include them in the sale.

[45] In my view it is necessary to determine this factual point in order to assess whether the jurisdictional issue argued by the appellants arises in this case.

[46] The appellants have identified specific items in the schedules to the Distributel APA that they say belong to Teliphone Corp., its subsidiaries or other entities. They have provided source documentation substantiating their claims to ownership. The Monitor was unable to determine whether the claims are valid due to the complexity of the interrelated business operations of the TNW Group. As a consequence, at the time he appeared before the chambers judge, the Monitor was unable to confirm that all of the scheduled assets belonged to the Petitioners. On a review of the record before the *CCAA* court, the preponderance of evidence is that third party assets are included in the asset schedules attached to the APA.

[47] The fact that the Monitor referred in both his 7th and 8th Reports to the sale of assets of the Business lends support to the conclusion that the Monitor was of the view that he had been authorized to sell the assets of the Business of the Petitioners, whether or not those assets included third party assets, as long as the third party assets were either assets of the Petitioners' subsidiaries or assets over which the Petitioners' Secured Creditors held security.

[48] I then approach this appeal on the footing that the APA does include third party assets. The question is whether the *CCAA* court had the jurisdiction to sell third party assets as part of the assets of the Business of the Petitioners.

[49] The Monitor has advanced three arguments said to support his authority to sell third party assets as part of the sale of the assets of the Petitioners. The first is that the April 6 order conferred that authority. The Monitor expressed this argument in the following way in his factum:

> Paragraph 6 of the Expanded Monitor Powers Order [i.e. the April 6 order] provides the Monitor with authority to sell assets of persons that are not necessarily the assets of the Companies but where such assets are subject to the interests of the Secured Creditors.

[50] The chambers judge interpreted the April 6 order in a similar manner, holding that it contained "a presumption against the assets being the property of an entity whose assets the Monitor could not sell."

[51] In my opinion, the April 6 order does not confer this authority. The April 6 order sets up a mechanism for separating the assets of TNW Networks Corp. that were derived from the Petitioners' Property or other designated entities from those that were not, and authorizing the Monitor to include in the asset sale those assets of TNW Networks Corp. that were in the former category. Paragraph 6 relates solely to the assets of TNW Networks Corp., not to the assets of Teliphone Corp. or any other entity.

[52] These provisions of the April 6 order were based on the irrevocable assignment by TNW Networks Corp. of its assets to the Monitor through the Undertaking and Acknowledgement of March 21, 2017. That Undertaking and Acknowledgement also related solely to the assets of TNW Networks Corp.

[53] The second argument made by the Monitor before the chambers judge and this Court is the proposition set out in his 8th Report in these terms:

> The Monitor has reviewed Exhibit "Y" to the Trevor-Deutsch Affidavit including the categories of assets that are purportedly owned by Teliphone Corp. and has prepared a schedule attached as **Appendix "H"** to this report wherein the Monitor provides its view that those assets were either: (i) acquired directly by 864 in 2013; (ii) owned by one of the Petitioners subsidiaries; (iii) are subject to Secured Creditor's security; or (iv) do not form part of the Purchased Assets.

[54] With respect I cannot agree. The Petitioners and its subsidiaries are separate legal entities. Assets belonging to the subsidiaries of the Petitioners cannot be available for disposition as part of the *CCAA* process unless the subsidiaries have been brought within that process as debtor companies, which they have not.

[55] The fact that the assets of Teliphone Corp. and the other entities may be subject to security held by the secured creditors of the Petitioners cannot provide a basis for authorizing their sale in this transaction. The secured creditors have not taken steps to realize on that security and they cannot do so in this proceeding to which Teliphone and the other entities are not parties. As Affleck J. held in his January 30 reasons for judgment, Teliphone Corp. is not part of the *CCAA* proceedings and there is no basis on which its assets could be sold in that process.

[56] The final argument raised by the Monitor before the chambers judge and briefly addressed before us is that the while the ownership claims of Teliphone Corp. and the other entities were being "expunged and discharged" by the order under appeal, the expungement related to claims to the assets themselves, whereas the order deferred the question of distribution of the proceeds to another day. The suggestion was that Teliphone Corp. and the other entities in question could still advance a claim against the purchase funds. The July 18 order is based on the B.C. Model Approval and Vesting Order under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-83, and the Monitor pointed out that Explanatory Note 6 from the B.C. Model Insolvency Order Committee states that claims being vested out may in some cases include ownership claims.

[57] This submission was not fully argued before us and it would not be appropriate for this Court to embark upon a detailed assessment of whether this Model Order has the meaning suggested in relation to ownership claims or whether such a process is appropriate for a sale under s. 36 of the *CCAA*. I note that even if there was authority to convert third party assets into cash, the claims preserved for further assessment appear to be limited to security interests or other financial or monetary claims, not claims of outright ownership. In any event, it is sufficient for purposes of this appeal to observe that to give effect to this argument would not only be inconsistent with the previous order of Affleck J. refusing to include Teliphone Corp. in these proceedings, but would also require a source of jurisdiction under the *CCAA* that has not been established in this appeal.

[58] In my opinion, the documented evidence of Teliphone Corp. that some of the assets scheduled to the APA belonged to it or other entities not before the Court, in combination with the inability of the Monitor to confirm that the assets were all the property of the Petitioners, precluded the ability of the Court to approve the asset purchase agreement presented for approval. The *CCAA* Court had no jurisdiction to authorize the sale of assets other than the assets of the Petitioners and TNW Networks Corp.

[59] In light of my conclusions concerning the assets that are included in the APA, it is not necessary to consider the appellants' further argument concerning the process of this *CCAA* proceeding.

[60] For these reasons, I would allow the appeals and set aside the order approving the Distributel APA. I would extend the stay of proceedings to August 28, 2017 in order to give interested parties an opportunity to consider the implications of this judgment. Further proceedings in this matter are remitted back to the Supreme Court of British Columbia.

[61] **GOEPEL J.A.**: I agree.

[62] **FITCH J.A.**: I agree.

[submissions by counsel re. costs]

[63] **GOEPEL J.A.**: If the appellants wish to pursue the question of costs, they are at liberty to file written submissions concerning that because, it seems to me, that it raises a somewhat potentially important practice point which we are not going to attempt to deal with summarily. If, as I say, the appellants wish to seek costs, they have liberty to file written submissions. Those submissions should be filed within the next 15 days. The Monitor will have a week to respond to those submissions. If the appellants, upon reflection, decide not to pursue the issue of costs, then there will be no costs of the appeal.

"The Honourable Mr. Justice Hunter"

In the Court of Appeal of Alberta

Citation: PanAmericana de Bienes y Servicios v. Northern Badger Oil & Gas Limited, 1991 ABCA 181

Date: 19910612
Docket: 11698 & 11713
Registry: Calgary

Between:

PanAmericana de Bienes y Servicios, S.A.

Respondent
(Plaintiff)

- and -

Northern Badger Oil & Gas Limited

Respondent
(Defendant)

And Between:

The Energy Resources Conservation Board

Appellant
(Applicant)

- and -

Vennard Johannesen Insolvency Inc., Receiver and Manager of Northern Badger Oil & Gas Limited

Respondent

- and -

Attorney General of Alberta

Appellant
(Intervenor)

The Court:

The Honourable Chief Justice Laycraft
The Honourable Mr. Justice Foisy
The Honourable Mr. Justice Irving

Reasons for Judgment of The Honourable Chief Justice Laycraft
Concurred in by The Honourable Mr. Justice Foisy
And Concurred in by The Honourable Mr. Justice Irving

APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE MACPHERSON OF THE COURT OF QUEEN'S BENCH OF ALBERTA DATED THE 20TH DAY OF DECEMBER, 1989

COUNSEL:

Stanley H. Rutwind, Esq., for the Appellant (Intervenor) The Attorney General of Alberta

W. J. Major, Q.C. and M. J. Major, Esq., Messrs. Major Caron & Company for the Appellant The Energy Resources Conservation Board

R. C. Wigham, Esq., Messrs. Fenerty Robertson Fraser & Hatch for the Respondent, Panamerlcana de Bienes Y Servlclos, S.A.

T. L. Czechowskyj, Esq. Messrs. McManus Anderson Miles for the Respondent, Vennard Johannesen Insolvency Inc.

J. D. McDonald, Esq., Messrs. Bennett Jones Verchere for Collins Barrow Limited, Trustee in Bankruptcy

REASONS FOR JUDGMENT OF THE HONOURABLE CHIEF JUSTICE LAYCRAFT

[1] The issue on this appeal is whether the **Bankruptcy Act** (R.S.C. 1980, c. B-3) prevents the court appointed Receiver/Manager of an insolvent and bankrupt oil company from complying with an order of the Energy Resources Conservation Board of the Province of Alberta. The order required the Receiver/Manager, in the interests of environmental safety, to carry out proper abandonment procedures on seven suspended oil wells. In Court of Queen's Bench, Mr. Justice MacPherson held that the order requiring "the abandonment and securing of potentially dangerous well sites is at the expense of the secured creditor's entitlement"

under the Bankruptcy Act and is "beyond the province's constitutional powers". He directed the Receiver/Manager not to comply with the order. For the reasons which follow, I respectfully disagree with that conclusion and would allow the appeal by the Board.

[2] "Abandonment" and "abandon" are terms with different meanings in the oil industry than when used in their usual legal sense. In the oil industry they refer to the process of sealing a hole which has been drilled for oil or gas, at the end of its useful life, to render it environmentally safe. In general terms, the process requires that the well bore be sealed at various points along its length to prevent cross-flows of liquids or gases between formations, or into aquifers or from the surface. The cost may vary from a few hundred dollars to tens of thousands of dollars depending on the circumstances.

I FACTS

[3] Prior to May, 1987 Northern Badger Oil and Gas Limited carried on business in the exploration for, and the production of, oil and gas in Alberta and Saskatchewan. It was licensed to operate 31 oil and gas wells in Alberta of which 11 were producing wells. The remainder were suspended or standing in a non-producing condition. Northern Badger owned varying interests approximating 10 per cent in each well and was the operator of them on behalf of itself and other working interest owners.

[4] On November 1, 1985, Northern Badger granted floating charge debenture security over certain oil and gas assets, including its interest in the 31 Alberta wells, to the respondent Panamericana. It defaulted under the debenture and in May, 1987, Panamericana applied for and obtained a court order appointing Vennard Johannesen Insolvency Inc. ("the Receiver")

> "…Receiver and Manager of all of the undertaking, property, and assets of the Defendant, Northern Badger Oil and Gas Limited with authority to manage, operate, and carry on the business and undertaking of the Defendant…"

[5] On August 7, 1987, a Receiving Order, effective retroactively to July 7, 1987, placed Northern Badger in Bankruptcy. Collins Barrow Limited was appointed Trustee in Bankruptcy.

[6] On July 20, 1987, the Energy Resources Conservation Board wrote to Northern Badger referring to the insolvency and

> "requiring an undertaking that the wells will continue to be operated in adherence with the regulations and conditions of the well licenses. Also it is essential that the licensee

be capable of responding to any problems which may occur and properly abandoning the well once production is complete."

[7] The Board further suggested that "the solution to the problem" would be to transfer the wells to a party "who is prepared to take on the responsibilities of the licensee". The Receiver responded to this letter on August 14, 1987. It reported that 21 of the wells had been transferred to other parties, but that 12 wells had not. It then said:

> "The Receivership Manager is presently involved in negotiations to sell all of the assets and liabilities to a number of interested parties. Vennard Johannesen is therefore striving to pass on the obligations to the prospective purchaser." (emphasis added)

[8] The Board wrote again to the Receiver on December 11, 1987, pointing out that their records still showed Northern Badger to be the licensee of the wells. The letter asked the Receiver to confirm that no permits, licenses or approvals would be remaining before they applied for discharge "or alternatively that you give the Board notice of any application to be discharged".

[9] During the interval between these two letters, the Receiver had attempted to sell the Northern Badger properties to various prospective purchasers including Senex Corporation. On November 13, Senex made an offer to purchase the remaining Northern Badger assets held by the Receiver for $1,850,000.00 plus a carried interest of 17.5% on certain undeveloped properties held by Northern Badger. Under this offer Senex would become the licensee of the remaining wells. However, the agreement had a clause which provided:

> "The purchaser may elect to exclude any interest of the Vendor in any lands which has a value less than the costs of abandonment as agreed by the parties, or, failing agreement by Sproule Associates Limited, on or before the closing date."

[10] The Receiver applied to the Court for approval of the sale; the affidavit material filed in support of the application made no express reference to the "back out" clause. The Receiver did not give notice to the Board of the application. The Court approved the transaction on December 18, 1987 and the closing date of the sale was set for January 15, 1988.

[11] Prior to the closing, by an agreement dated on the same day, Senex exercised its rights under the "back out" clause and passed seven wells back to the Receiver. This amending agreement did not vary the purchase price of the remaining assets. All the wells

passed back must now be abandoned; two of them require minor expenditures, but the other five will require expenditures in the range of $40,000.00 each.

[12] The court order of December 18, 1987, set aside five different funds to meet the claims of named claimants against Northern Badger for sums held in trust for them, or where claimants had rights of set-off, or to meet lien claims against the properties themselves. None of these funds made allowance for the abandonment of the wells. The remainder of the moneys were held by the Receiver awaiting the outcome of litigation to determine whether Panamericana was entitled to priority over other creditors.

[13] On January 27, 1988, the Receiver advised the Board that

> "effective January 15, 1988 Vennard Johannesen Insolvency Inc. in its capacity as Receiver and Manager of Northern Badger Oil and Gas Limited has sold all of the assets of the company to Senex corporation.
>
> "Please cancel our account with you effective January 15, 1988. We will not be responsible for any charges or fees incurred after January 15, 1988…." (emphasis added)

[14] After a six day trial in May, 1988, Panamericana obtained judgment against Northern Badger for $1,304,112.00, and also obtained a declaration that it had priority over all other creditors of Northern Badger for the payment of sums due under the debenture. Thereupon, on May 29, 1988, the Receiver applied to Court of Queen's Bench for an order approving its administration of the Receiving order and for a discharge from its responsibilities. The affidavit filed in support detailed the payment or settlement of all claims for which provision had been made by the five funds established in December 1987. It disclosed that, after all assets were distributed to Panamericana, there would still be a substantial deficiency in the payment of the debenture debt.

[15] At the time of this application, the Receiver had approximately $226,000. on hand which it sought to pay to Panamericana after deducting its fees and disbursements. It wished to deliver to Collins Barrow, as Trustee in Bankruptcy, what were termed "minor, unrealized receivables" including the interest of Northern Badger in the seven wells and the well licenses relating to them. The affidavit did not refer specifically to the liability arising from the obligation to abandon the seven wells. An apparent indirect reference to these seven wells is contained in paragraph 18 of the supporting affidavit:

> "The Receiver has determined that certain assets of Northern Badger were not marketable and were excluded by Senex Corporation in its purchase of the assets of

Northern Badger, which assets shall remain with the estate of Northern Badger, subject to any further direction of this Honourable Court."

[16] The record before this court makes only brief reference to events during the next year. However, the application by the Receiver to be discharged remained in abeyance. In December 1988, the Board wrote to the Receiver pointing out that a number of wells were still licensed to Northern Badger. The Receiver did not respond until May 3, 1989. It advised the Board that five of the seven wells which now require to be abandoned, had been deleted from the Senex sale.

[17] The Board's reaction to this information was, apparently, immediate. On June 1, 1989, an Order in Council of the Lieutenant Governor in Council purporting to be issued under Section 7 of the Oil and Gas Conservation Act approved the issuance by the Board of an order respecting the abandonment of those five wells and the two others.

[18] The Board order authorized by the Order in Council was issued on June 6, 1989. It required the Receiver to submit abandonment programs for the seven wells by June 15, 1989 and to abandon them in accordance with an approved program on or before February 28, 1990. On June 13, 1989 the Board moved in Court of Queen's Bench for an order requiring the Receiver to comply with the Board's order and this litigation resulted.

[19] While the Board's motion was pending, an effort was made to obtain contribution toward the cost of abandonment from other working interest owners. Upon the application of the Board, on November 23, 1989, Mr. Justice MacPherson directed the Receiver to take steps to collect from other working interest owners of the seven wells their proportionate share of abandonment costs totalling $202,500.00. The proportion of these costs attributable to the percentage interest of Northern Badger in the wells was estimated at $17,330.00. Nothing in the record before the Court discloses whether, or the extent to which, this effort succeeded.

[20] On this appeal, the respondents objected that a portion of the evidence presented on behalf of the Board was inadmissible. They strongly urged that there was, in the result, no evidence that failure to abandon the wells presented any danger. The evidence in question was the affidavit of Mr. G.J. DeSorcy, Chairman of the Energy Resources Conservation Board. In that affidavit Mr. DeSorcy stated that he is a Professional Engineer and Chairman of the Board. He testified, on information and belief, as to a considerable amount of technical information about the five wells, the formations encountered, and the present condition of

them. He expressed opinions as to the danger of cross flows of liquids and gases, and as to hazards to the environment and to "public health and safety". The information was, apparently, derived from the records of the wells filed with the Board; the expressions of opinion were his own.

[21] In my opinion, it is not necessary to determine whether this information was admissible in this form or to consider the need for a new trial if it was not. Even if the information and expressions of opinion in this affidavit are ignored, there is ample evidence on the record in other affidavits, including those filed on behalf of the Receiver, to establish the probable cost of abandonment of the wells and the need for that process. As will be discussed later in these reasons, the process of abandonment of oil and gas wells is part of the general law of Alberta enacted to protect the environment and for the health and safety of all citizens.

II THE REASONS FOR JUDGMENT

[22] The learned Chambers Judge delivered extensive reasons for Judgment. He held that the Board order sanctioned by the Order in Council was within the Board's jurisdiction under its the general powers contained in sections 4(b), 4(f) and 7 of the Oil and Gas Conservation Act. He held, however, that the Board "is a creditor seeking to have its claim to have the seven wells abandoned, preferred to the claim of the secured creditor and to the scheme of distribution set forth in section 107 of the Bankruptcy Act." He cited Re Rainville [1980] 1 S.C.R. 45 (S.C.C.) and R. v. Henfrey, Samson and Belair Limited [1989] 2 S.C.R. 24 (S.C.C.) and said:

> "The E.R.C.B. Orders-in-council in form relate to a constitutionally valid objective, that is, abandonment of gas wells. The genuine purpose is to do something beyond the province's constitutional powers. It is to take money directed, by the Bankruptcy Act, to be paid to a secured creditor, and apply it to another purpose.
>
> ……..
>
> "Subject to the rights of secured creditors, everything in the nature of property of the bankrupt vests in the Trustee in bankruptcy. The E.R.C.B. has the powers under the Oil and Gas Conservation Act to abandon the wells and collect the costs from the appropriate parties.
>
> This claim, whether done directly or ordered to be done, is a claim provable in bankruptcy.
>
> Section 121 of the Bankruptcy Act:

'All debts and liabilities, present or future, to which the bankrupt is subject'

is surely wide enough to cover this liability.

The proper approach to solving problems such as are raised in the case at bar is prescribed by the Supreme Court of Canada in the Federal Business Development Bank v. Commission de la Sante et de la Securlte du Travail et al. 68 C.B.R. 209 at page 217 and following. A similar case of contest between preserving the secured creditors' rights as opposed to saving the public purse.

The Bankruptcy Act has not been amended to deal with modern social problems of abandonment of contaminated property. Here the abandonment and the securing of potentially dangerous well sites is at the expense of the secured creditors' entitlement if the E.R.C.B. were to succeed.

While I am aware that the Supreme Court of the United States of American split five to four in deciding a similar issue in the matter of Quanta Resources, 474 U.S. 494 (1986), I am of the view that the law of Canada accords with the dissenting view of the Chief Justice of the United States when he said that it was for the legislature to change the law, not the courts, when it came to impairing otherwise valid security for societal purposes. One should see also Lloyd's Bank of Canada v. International Warranty Company Limited et al., an unreported decision of the Alberta Court of Appeal (1989) as to the need for clear legislative statements before destroying property rights.

Accordingly, I must instruct the Receiver/manager that he must not proceed to abandon the several wells directed to be abandoned by the order of the E.R.C.B. out of the monies held for the secured creditors."

III THE REGULATORY REGIME FOR ALBERTA OIL AND GAS WELLS

[23] The regulatory scheme for oil and gas operations in Alberta is contained in the Oil and Gas Conservation Act (R.S.A. 1980 c. 0-5, in the Energy Resources Act (R.S.A. 1980 c. E-11) and in the regulations under those acts. Each statute contains a statement of its purposes. Section 4 of the Oil and Gas Conservation Act provides:

"4. The purposes of this Act are:

(b) to secure the observance of safe and efficient practices in the locating, spacing, drilling, equipping, completing, reworking, operating and abandonment of wells and in operations for oil and gas.

……

(f) to control pollution above, at or below the surface in the drilling of wells and in operations for the production of oil and gas and in other operations over which the Board has jurisdiction.

[24] The Board is given wide specific powers under the act in the regulation of operations in the exploration for, and production of, oil and gas. Where a specific power is not given to the Board to be exercised on its own volition, it has a wide general power to be exercised with the authorization of the Lieutenant Governor in Council. Section 7 provides:

> 7. The Board, with the approval of the Lieutenant Governor in Council, may make any just and reasonable orders and directions the Board considers necessary to effect the purposes of this Act and that are not otherwise specifically authorized by this Act.

[25] Section 9 provides that a Board order shall override the terms of any contract. Sections 11 to 20 provide for the licensing of oil and gas drilling and producing operations. Section 11 provides that no person shall continue any producing operations unless

> "(b) he is the licensee or is acting under the instructions of the licensee."

[26] Section 13 provides that if it is established that a licensee does not have the right to produce oil or gas from land, the license becomes "void for all purposes except as to the liability of the holder of the license to complete or abandon the well…". Section 3.030 (3) of the regulations also provides, in some circumstances, for the Board to direct a licensee to abandon a well. Section 18 provides that a well license shall not be transferred without the consent of the Board. Section 19 outlines circumstances in which the Board may cancel a license.

[27] By sections 92(1) and (2) the Board is empowered to enter a well site and to perform, itself, work needed for "control, completion, suspension or abandonment of the well". The cost of this work then becomes a "debt payable by the licensee of a well to the Board". Section 95 empowers the Board to enforce any order by taking over the production, management and control of the well.

[28] The Energy Resources Conservation Act (R.S.A. 1980 c. fill), which establishes the Board, has a similar statement of its purposes in Section 2. Among these purposes are:

> "2 (c) to effect the conservation of, and to prevent the waste of, the energy resources of Alberta;
>
> (d) to control pollution and ensure environment conservation in the exploration for, processing, development and transportation of energy resources and energy;
>
> (e) to secure the observance of safe and efficient practices in the exploration for, processing, development and transportation of the energy resources of Alberta;"

[29] It is evident that the regulatory regime contained in these statutes and regulations contemplates that all wells drilled for oil or gas will one day be abandoned. That is so whether the well is unsuccessful or whether it produces large quantities of oil or gas. At some point, when further production is not possible or the cost of production of remaining quantities exceeds the revenue which could be obtained from it, the process of abandonment is required of the well licensee. In those situations where there is no solvent entity able to carry out the abandonment duties the wells become, in the descriptive vernacular of the oil industry, "orphan wells". Thus the direct issue in this litigation, in my opinion, is whether the Bankruptcy Act requires that the assets in the estate of a insolvent well licensee should be distributed to creditors leaving behind the duties respecting environmental safety, which are liabilities, as a charge to the public.

IV DID THE BOARD HAVE A PROVABLE CLAIM IN THE BANKRUPTCY?

[30] A basic premise of the respondents' position in Court of Queen's Bench, and in this court, is that the Board has a provable claim as a creditor in the bankruptcy of Northern Badger. From this it is contended that, in enforcing the requirement for the proper abandonment of oil and gas wells, the Board simply ranks as a creditor. Then, it is said, the scheme of distribution of the Bankruptcy Act gives priority to the secured creditors so that the trustee is unable to obey the law requiring abandonment of oil and gas wells. That is so, it is urged, because the requirement of the provincial legislation cannot subvert the scheme of distribution specified by the Bankruptcy Act. The respondents point to the definition of "creditor" in Section 2 of the Bankruptcy Act and to the elements of a "provable claim" set forth in section 121.

[31] Mr. Justice MacPherson agreed with these contentions saying that the words in sections 2 and 121 of the Bankruptcy Act were "surely wide enough to cover" Northern Badger's liability to abandon the wells. These sections provide:

> "2. In this Act,
>
> "Creditor" means a person having a claim preferred, secured or unsecured, provable as a claim under this Act;"
>
> "121(1) All debts and liabilities, present or future, to which the bankrupt is subject at the date of the bankruptcy or to which he may become subject before his discharge by reason of any obligation incurred before the date of the bankruptcy shall be deemed to be claims provable in proceedings under this Act."

[32] There are two aspects to the question whether the Board had a "provable claim" in the bankruptcy. The first is whether Northern Badger had a liability; the second is whether that liability is to the Board so that it is the Board which is the creditor. I respectfully agree that Northern Badger had a liability, inchoate from the day the wells were drilled, for their ultimate abandonment. It was one of the expenses, inherent in the nature of the properties themselves, taken over for management by the Receiver. With respect, I do not agree, however, that the public officer or public authority given the duty of enforcing a public law thereby becomes a "creditor" of the person bound to obey it.

[33] The statutory provisions requiring the abandonment of oil and gas wells are part of the general law of Alberta, binding every citizen of the Province. All who become licensees of oil and gas wells are bound by them. Similar statutory obligations bind citizens in many other areas of modern life. Rules relating to health, or the prevention of fires, or the clearing of ice and snow, or the demolition of unsafe structures are examples which come to mind. But the obligation of the citizen is not to the peace officer, or public authority which enforces the law. The duty is owed as a public duty by all the citizens of the community to their fellow citizens. When the citizen subject to the order complies, the result is not the recovery of money by the peace officer or public authority, or of a judgment for money, nor is that the object of the whole process. Rather, it is simply the enforcement of the general law. The enforcing authority does not become a "creditor" of the citizen on whom the duty is imposed.

[34] It is true that this Board has the power by statute to create in its own favour a statutory debt if it chooses to do so. It may, under Sections 91(1) and (2) of the Oil and Gas Conservation Act (discussed above) do the work of abandonment itself and become a creditor for the sums expended. But the Board has not done so in this case. Rather it is simply in the course of enforcing observance of a part of the general law of Alberta.

[35] Counsel for Panamericana cited three authorities in support of its argument that the Board is a creditor of Northern Badger: Re Rainville [1980] 1 S.C.R. 45; Deloitte, Haskins & Sells **Ltd.** v. WCB (1985), 19 D.L.R. (4th) 577 (S.C.C.); and R. in Right of British Columbia v. Henfrey Samson Belair Ltd. [1989] 5 W.W.R. 577 (S.C.C.). But in all these cases some actual impost had been levied against the citizen and a sum of money was due and owing to the specific public authority involved. In Rainville, Quebec had registered a "privilege" for $5,474.08 for sales tax which the company had failed to remit; in Deloitte, Haskins & Sells, the sum in dispute was a levy of $3,646.68 made under the Workers' Compensation Act; in

Henry, Samson, Belair Ltd. the company had collected, and failed to remit sales tax of $58,763.23. Thus in each case a specific sum was due to the Crown, or a Crown agency, as a debt. None of the cases is authority for the proposition that a public officer ordering a citizen to obey the general law thereby becomes a creditor for any amount the citizen may ultimately be required to spend in complying.

[36] In my view, the Board is not, at this point, a "creditor" of Northern Badger with a claim provable in its bankruptcy. The problem presented by this case is not to be solved, therefore, by determining whether the Board ranks as a creditor of Northern Badger before or after the secured creditors. Rather it must be determined whether the Receiver, which was the operator of the oil wells in question, had a duty to abandon them in accordance with the law.

V THE DUTIES OF THE RECEIVER

[37] Vennard Johannesen Insolvency Inc. assumed its duties as Receiver in this case as an officer of the court. The nature of its duties has been determined by a long line of cases, now reinforced by the provisions of the Business Corporations Act (R.S.A. 1980 c. B-15). Sections 92 and 93 require the Receiver to act in accordance with the directions of the Court and of the instrument under which the appointment was made. Sections 94 and 95 provide:

> "94 A receiver or receiver-manager of a corporation appointed under an instrument shall
>
> (a) act honestly and in good faith and,
>
> (b) deal with any property of the corporation in his possession or control in a commercially reasonable manner.
>
> 95 On an application by a receiver or receiver-manager, whether appointed by the Court or under an instrument, or on an application by any interested person, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:
>
> (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
>
> (b) an order determining the notice to be given to any person or dispensing with notice to any person;
>
> (c) an order fixing the remuneration of the receiver or receiver-manager;
>
> (d) an order

(i) requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation;

(ii) relieving any of those persons from any default on any terms the Court thinks fit;

(iii) confirming any act of the receiver or receiver-manager;

(d.1) an order that the receiver or receiver-manager make available to the applicant any information from the accounts of his administration that the Court specifies;

(e) an order giving directions on any mater relating to the duties of the receiver or receiver-manager."

[38] A receiver appointed by the court must act fairly and honestly as a fiduciary on behalf of all parties with an interest in the debtor's property and undertaking. The receiver is not the agent of the debtor or the creditor or of any other party, but has the duty of care, supervision and control which a reasonable person would exercise in the circumstances. The receiver may be liable for failure to exercise an appropriate standard of care. These points have been made in many cases starting in 1905 with **Plisson v. Duncan** (1905) 36 S.C.R. 647. The decision of Viscount Haldane in **Parsons et al v. Sovereign Bank of Canada** [1913] A.C.160, which has been frequently quoted, emphasizes the independence of the receiver from those who procured the appointment.

[39] It is also clear that the receiver takes full responsibility for the management, operation and care of the debtor's assets, but does not take legal title to them. That point has been made in a number of decisions including that of Lamer J. (as he then was) speaking for the court in F.B.D.B. v. Commission de Sante et al. (1988) 84 N.R. 308. At page 315 he said:

> "… the immoveable in the case at bar is property of the bankrupt within the meaning of the Bankrupt Act. Even if the trustee takes possession of the immoveable before the bankruptcy, the bankrupt remains owner of his property. The trustee who has seized an encumbered right of ownership over that property: he has only the rights of a creditor under a pledge or hypothec. This Court has ruled this way twice in Laliberte v. Larue, [1931] S.C.R. 7 and Trust general du Canada v. Roland Chalifoux Ltee, [1962] S.C.R. 456."

[40] A further factor affecting the obligation of a court appointed receiver is the receiver's status as an officer of the court; the standard required because of that status is one of meticulous correctness. In Alta Treasury Branches v. Invictus Financial Corporation Ltd. (1986) 42 Alta L.R. (2d) 181, Stratton J. (as he then was) said that the receiver's obligations

"reach further than merely acting honestly". He quoted with approval the statement of Wilson J. in Fotti v. 777 Mgmt. Inc. [1981]5 W.W.R. 48 at 54:

> "… the receiver is an officer of the court and in his discharge of that office he may not, in the name of the court, lend his power to defeat the proper claims of those on whose behalf those powers are exercised. Clothed as he is with the mantle of this court, his duties are to be approached not as the mere agent of the debenture holder, but as trustee for all parties interested in the fund of which he stands possessed."

[41] The same concern for proper conduct by the court's appointed officer may be seen in the judgment of the Saskatchewan Court of Appeal in Canadian Commercial Bank v. Simmons Drilling Ltd. (1989) 76 C.B.R. 241. In that case the Receiver undertook a lengthy review of the debtor's records, and discovered that some subcontractors, who had not registered liens in time, were unpaid. In some cases, the time for filing liens had expired after the Receiver had been appointed. The Court affirmed the duty of a Receiver to ascertain his obligations within a reasonable time and noted that the Receiver's actions in the discharge of those obligations are the actions of the court which appointed him. It held that, whether by intention or by default, an officer of the court, cannot be permitted to change the relative rights of those for whom he is acting. Sherstobitoff J.A. said at page 249:

> "The receiver, and through it the bank, must bear responsibility for the consequences of the failure to act with sufficient diligence to discover the claims within a reasonable time, thereby permitting lapse of the limitation period.
>
> What is clear is that, when the receiver was appointed, the subcontractors were entitled to payment from the trust fund. The failure to make payment to the subcontractors within a reasonable time thereafter, an obligation imposed by s. 89 of the Business Corporations Act and s. 7 of the Builders' Lien Act taken together, was in default of those statutory obligations. If the receiver had applied to the court for directions for payment out of the moneys on that date or within a reasonable time thereafter, the money would have been ordered paid to the subcontractors. The result is that the default of the receiver in failing to act with sufficient promptness and diligence to discover and pay the claims against the trust before expiration of the limitation period has deprived the subcontractors of the right to realize their claims from the trust fund.
>
> The bank now seeks to benefit from that default and the receiver supports its position. That position is untenable. While it may not be improper for a private debtor to withhold payment of a debt due and owing, whether deliberately or by neglect or oversight, and thereby benefit from an intervening limitation period, the same is not true of a receiver, <u>for he is an officer of the court.</u> The receiver's action is the action of the court and the court will not permit or approve any action on the part of its officer which has the effect of changing the rights of competing creditors, whether deliberately or by default."
>
> (emphasis added)

[42] In the present case it is clear that almost from the commencement of the receivership, the Receiver was aware of the obligation, in law, of Northern Badger to see the oil and gas wells properly abandoned. The correspondence from the Board detailed the obligation for the proper operation of the wells and the ultimate abandonment of them.

[43] As one reviews the sequence of events leading to the sale of the assets to Senex, it is difficult to escape the conclusion that the "back out" clause was deliberately negotiated to achieve the very result for which the respondents now contend. The "back out" clause contemplates the situation that the costs of abandonment of some wells may exceed the revenue to be gained from them. Of course, no matter what wealth a well has produced in the past, there comes a time, in the last days of its life, when little oil remains and the well must be abandoned. At that point it is a liability with the cost of abandonment exceeding the revenue that could be obtained. In this case, the parties even provided for an arbitrator to determine, if need be, whether that moment had arrived. All wells with some value were to be sold; the remainder were to be left in the bankrupt estate when the Receiver obtained a discharge from its duties.

[44] Moreover, whether by accident or design, the Board was not made aware of the developing situation. Despite the correspondence, the Board was not aware that Senex was able to exercise a "back out" clause in the sale agreement. The Board was first told of the effort "to sell all the assets and liabilities". It was then told that "all the assets have been sold". Only the most alert reader would detect the subtle difference in the two quoted portions of the Receiver's letters. On the material filed, it is also difficult to escape the conclusion that the court approved the sale to Senex without being aware of the prospect that some wells were to be left as "orphans".

VI CONCLUSION

[45] In my opinion the Board had the power, when authorized by the Lieutenant Governor in Council, to order the abandonment of the wells by some person. The order was clearly within the general regulatory scheme, and within the expressed purposes, of both of the statutes regulating the oil and gas industry. Indeed, the contrary was not argued. What was contended is that the Board should have directed its order to Northern Badger or to the trustee in bankruptcy rather than to the Receiver. What was further contended is that the receiver or trustee in bankruptcy is unable to obey the general law enacted by the provincial

legislature to govern oil wells because to do so would subvert the scheme Parliament has devised for distribution of assets in a bankruptcy.

[46] The parties referred the court to some cases in the United States and to one in Canada where a debtor's legal duties on environmental matters conflicted with the potential distribution of the estate on insolvency. In each case, however, the response of the court was to some degree determined by statutory provisions. The cases are not easy to reconcile.

[47] In Kovacs v. B & W Enterprises (1984) 469 U.S. 649 a state obtained an injunction ordering an individual to clean up a hazardous site, and later a receiver was appointed to seize property of the debtor and perform the duty. The individual filed for bankruptcy and the issue was whether his subsequent discharge from bankruptcy cleared the obligation. It was held in the Sixth Circuit Court of Appeals that the claim was essentially a monetary "liability on a claim" under the bankruptcy statute, and that the debtor was discharged. The United States Supreme Court affirmed.

[48] In Penn Terra Ltd. V. Dept. of Environmental Resources (1984) 733 F. 2d 267 the Third Circuit Court of Appeals was required to decide whether an exemption clause in the bankruptcy legislation should be construed to exempt from discharge an order requiring the debtor to complete restoration of the sites after coal operations. The court observed that the judgment obtained was not in the form of a traditional money judgment as for a tort or other claim. It then held that the debtor was not discharged and was required to perform the restoration.

[49] In Midlantic National Bank v. New Jersey Department of Environmental Protection (1985) 474 U.S. 494, a corporation filed for bankruptcy after it was discovered to have stored oil contaminated with a carcinogen at a site in New Jersey and another in New York. The trustee proposed to abandon the sites on the ground that they were of "inconsequential value" to the estate. In New Jersey, State environmental officials ordered the site cleaned up. A majority of the United States Supreme Court held that a bankruptcy trustee may not abandon property in contravention of state law. The minority would have held that the abandonment might be barred in emergency conditions, which did not yet exist in the case.

[50] A similar problem arose again after both the above cases had been decided in United States v. Whizco Inc. (1988) 841 F. (2d) 147. The United States sought an injunction to force obedience to a statutory obligation to abandon a worked out coal mine. The Sixth

Circuit Court of Appeals held, following the Kovacs case, that the operator's discharge under the Bankruptcy Act discharged the operator's liability to the extent that it would require the expenditure of money.

[51] One similar case has arisen in Canada. In Canada Trust Company v. Bulora Corporation (1980) 34 C.B.R. 145, the Receiver, as in the present case, had been appointed to receive and manage the company. The Fire Marshall ordered the Receiver to demolish certain housing units which were in a "serious and hazardous" condition. It was urged that, despite the appointment of the Receiver, the company continued to exist and to hold title to its assets. Thus, it was said, the proper recipient of the demolition order was the company, itself, and not the Receiver. Cory J., then a judge of the High Court of Ontario, summarized the argument in these terms at page 151:

> "It was contended that the nature of the position of the receiver, although it might paralyze the power of the company for which it was appointed, did not extinguish the legal existence of that company. Thus Bulora continued to exist and continued as the entity responsible for the required demolition. It was said that, as the Fire Marshal had every right to recover the municipality, the receiver should not and could not be required to undertake the demolition, which would have the effect of reducing the amount recovered by Canada Trust, the secured creditor."

[52] Cory J. then summarized the powers of the Receiver under the order appointing it, which gave it very wide powers of management and control similar to those given the Receiver in this case. He then said at page 152:

> "There remains the major problem of determining who should bear the costs of the demolition. The order of the Fire Marshal is of vital concern for the safety of residents of the units adjacent to and close by the abandoned units. The safety of those persons occupying such units should be of paramount importance. If the receiver is given wide and sweeping powers in the management of the company, surely in the course of such management it has a duty to comply with a demolition order where the safety of individuals is so vitally concerned. It is indeed unfortunate that a creditor must suffer the loss resulting from the demolition. Nevertheless, the asset to be managed by the receiver must, in my opinion, be managed with a view to the safety of those residing in and beside that asset. Receivership cannot and should not be guided solely by the recovery of assets. In my view, there is a social duty to comply with an order such as this which deals with the safety of individuals affected by an asset the receiver is managing.
>
> The direction then will be that the receiver is to comply with the order of the Fire Marshal and proceed with the demolition of the specified units."

[53] The Court of Appeal affirmed the judgment of Cory J. [(1981) 39 C.B.R. 153]. The endorsement on the record was as follows:

> "There was an order made by the fire marshall the legality and appropriateness of which is not challenged by the appellant. We are of the view that under the circumstances it was not only within the jurisdiction of the learned judge to direct that the court-appointed receiver-manager carry out that order but those circumstances necessitated that the receiver-manager be so directed. Although Cory J. referred to a 'social duty' to comply with the order that language, with deference, was inappropriate. The duty involved was a statutory one and it was unnecessary for him to consider the social implications of the order. The appeal is dismissed with costs."

[54] As in Bulora Corporation, it is urged in this case that Northern Badger is the licensee of the wells; the Receiver has never had legal title to them and is not the licensee. Therefore, it is said, the abandonment order should be directed to Northern Badger and not to the Receiver. In my opinion, that contention is not valid.

[55] The Receiver has had complete control of the wells and has operated them since May, 1987, when it was appointed Receiver and Manager of them. It has carried out for more than three years activities with respect to the wells which only a licensee is authorized to do under the provisions of the Oil and Gas Conservation Act. In that position, it cannot pick and choose as to whether an operation is profitable or not in deciding whether to carry it out. If one of the wells of which a receiver has chosen to take control should blow out of control or catch fire, for example, it would be a remarkable rule of law which would permit him to walk away from the disaster saying simply that remedial action would diminish distribution to secured creditors.

[56] While the Receiver was in control of the wells, there was no other entity with whom the Board could deal. An order addressed to Northern Badger would have been fruitless. That is so because, by order of the court, upon the application of the debenture holder, neither Northern Badger nor its trustee in bankruptcy had any right even to enter the well sites or to undertake any operation with respect to them. Moreover, under the regulatory scheme for Alberta oil wells, only a licensee is entitled to produce oil and gas. The Receiver cannot be heard to say that, while functioning as a licensee to produce the wells and to profit from them, it assumed none of a licensee's obligations.

[57] I must also consider the contention, which found favour in the Court of Queen's Bench, that the receiver or bankruptcy trustee managing and operating oil and gas wells need not, and, indeed, is forbidden, to obey the general provincial law governing property of that description. Put another way, this argument states that the general provincial law regulating

the operation of oil and gas wells in Alberta is invalid to the extent that it purports to govern a receiver or bankruptcy trustee in possession of such wells.

[58] Conflict between federal and provincial legislation is, of course, a classic Canadian problem. A number of cases have considered the situation where either a federal or provincial law, validly enacted within the constitutional power reserved to the enacting body, also touches upon or affects a heading of power reserved to the other level of government. These cases have been extensively reviewed and commented upon in the recent decision of the Supreme Court of Canada in **Bank of Montreal v. Hall** [1990] 1 S.C.R. 121.

[59] Provincial legislation has often been upheld despite incidental effects on a subject under the federal power. Where there is direct confrontation (as where one statute says "yes" and the other says "no" -- as Dickson J. (as he then was) expressed it in Multiple Access Ltd. v McCutcheon [1982] 2 S.C.R. 16) the doctrine of paramountcy may force a conclusion of invalidity of the provincial legislation.

[60] That the two statutes affect the same subject matter does not necessarily mean that one or the other of them is invalid. An early case of this type was Canadian Pacific Railway Company v. Notre Dame de Bonsecours [1899] A.C. 367. In that case the Privy Council held that since Parliament has the exclusive right to prescribe regulations for the construction/ repair and alteration of a railway, a provincial legislature could not regulate the structure of a ditch forming part of the works. But it held intra vires a municipal code which prescribed the cleaning of the ditch and the removal of obstructions to prevent flooding.

[61] Similarly in **Royal Bank of Canada v. Workmen's Compensation Board of Nova Scotia** [1936] S.C.R. 560, the Supreme Court of Canada held valid a levy for worker's compensation which adversely affected security granted under the Bank Act. La Forest J., giving the judgment of the court in **Bank of Montreal v. Hall** (supra), quoted the judgment of Davis J. in the Nova Scotia case (at 568-569) as follows (at 148):

> "…I have reached the conclusion that the goods in question, though owned by the bank subject to all the statutory rights and duties attached to the security were property in the province of Nova Scotia
>
> > 'used in or in connection with or produced by the industry with respect to which the employer (was) assessed though not owned by an employer'
>
> and became subject to the lien of the provincial statute the same as the goods of other owners…It is a provincial measure of general application for the benefit of workmen

employed in industry in the province and is not aimed at the impairment of bank securities though its operations may incidentally in certain cases have that effect."

(emphasis added by La Forest J.)

[62] In **Bank of Montreal v. Hall** (supra) the provincial legislation in conflict with valid federal legislation was forced to give way. The bank sought to enforce security granted to it under the **Bank Act** and the issue was whether it was required to follow the procedures and experience delays prescribed by the Saskatchewan **Limitation of Civil Rights Act.** After a review of the case law and of the two enactments La Forest J. was "led inescapably to the conclusion" that there was an "actual conflict in operation" between them. The provincial legislation was held inoperative in respect of security taken by the bank.

[63] In my view, there is no such direct conflict in this case. The Alberta legislation regulating oil and gas wells in this province is a statute of general application within a valid provincial power. It is general law regulating the operation of oil and gas wells, and safe practices relating to them, for the protection of the public. It is not aimed at subversion of the scheme of distribution under the Bankruptcy Act though it may incidentally affect that distribution in some cases. It does so, not by a direct conflict in operation, but because compliance by the Receiver with the general law means that less money will be available for distribution.

[64] I respectfully agree with the decision in **Bulora Corporation** (supra). In my opinion, the Receiver, the manager of the wells with operating control of them, was bound to obey the provincial law which governed them.

[65] I would not attempt to define the limits of provincial regulatory authority in relation to the federal powers respecting insolvency and bankruptcy. The various levels of government regulate business in a myriad of ways. The extent to which these levels of government may, in the exercise of their powers, affect in an incidental way, the distribution of insolvent estates must depend, to a considerable extent, on the facts of the particular case.

[66] I would allow the appeal and direct the Receiver to comply with the Board Order. The parties may speak to costs.

DATED AT CALGARY, ALBERTA
THIS 12th DAY OF JUNE
A.D. 1991.