ENTERED

1103129

JS Nov 27 2020
J. Eidsvik

COURT FILE NUMBER	2001 05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	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 JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
APPLICANT/CLAIMANT	SHAMROCK VALLEY ENTERPRISES LTD.
DOCUMENT	**MATERIALS RELIED UPON BY SHAMROCK VALLEY ENTERPRISES LTD.**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MORROW TCHIR LLP Mailing: PO Box 336 Courier: 5226 50 Avenue St. Paul, AB T0A 3A0 Attention: Christina L. Tchir Phone: 780-645-2981 Fax: 780-645-3801

Material relied upon by SHAMROCK VALLEY ENTERPRISES LTD.

	AFFIDAVIT EVIDENCE
1	Affidavit of Murry Nielsen, sworn November 6th, 2020
2	Affidavit of Jason Panter, sworn October 9, 2020
	LEGISLATION
3	*Public Works Act, RSA 2000, c. P-46, s. 14*
4	*Builder's Lien Act, RSA 2000, c. B-7, s. 18*

HALSBURY'S LAWS OF CANADA REFERENCE MATERIAL	
5	*HTR-20* Nature of express trust
6	*HTR-27* Overview
7	*HTR-29* When trust is completely constituted
CASE LAW	
8	*Century Services Inc v Canada (Attorney General)*, 2010 SCC 60 at para 83
9	*Lubberts Estate (Re)*, 2014 ABCA 216 at para 49
10	*Valard Construction Ltd. v Bird Construction Co.*, 2016 ABCA 249 at para 105
11	*Beck v Otto*, 2017 ABQB 569 at para 58
12	*Bruderheim Community Church v Moravian Church in America (Canadian District)*, 2020 ABCA 393 at para 16

Form 49
[Rule 13.19]

COURT FILE NUMBER	2001 05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	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 JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.
APPLICANT / CLAIMANT	SHAMROCK VALLEY ENTERPRISES LTD.
DOCUMENT	**AFFIDAVIT**

Clerk's Stamp

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	MORROW TCHIR LLP Mailing: PO Box 336 Courier: 5226 50 Avenue St. Paul, AB T0A 3A0 Attention: Christina L. Tchir Phone: 780-645-2981 Fax: 780-645-3801

AFFIDAVIT OF MURRY NIELSEN

Sworn (or Affirmed) on November 6th, 2020

I, **Murry Nielsen**, of Elk Point, Alberta, SWEAR/AFFIRM AND SAY THAT:

1. I am a Director and President of the Applicant/Claimant, Shamrock Valley Enterprises Ltd. ("**Shamrock**"), and as such I have personal knowledge of the facts and matters hereinafter deposed to, except where stated otherwise, in which case I believe the same to be true.

THE PRIME CONTRACT

2. I understand from review of the records in the within proceedings, and I do believe, that:

    a. On or about November 1st, 2013, JMB Crushing Systems Inc. ("**JMB**") and the Municipal District of Bonnyville No. 87 (the "**MD**") entered into an agreement (the "**Prime Contract**") wherein the MD retained JMB to supply gravel/aggregate to the MD and transport gravel/aggregate for stockpiling at the lands legally described as NE 19-61-5-W4 (the "**MD Stockpile Lands**").

    b. The Prime Contract includes the following express terms:

    From the amounts paid to JMB by the MD, JMB is deemed to hold that part of them in trust which are required or needed to pay for any salaries, wages, compensation, overtime pay, statutory holiday pay, vacation pay, entitlements, employee and employer Canada Pension Plan contributions, employee and

employer Employment Insurance contributions, Workers' Compensation premiums and assessments, income taxes, withholdings, GST and all costs directly or indirectly related to the Product and Services. JMB shall pay the foregoing from such trust funds.

c. The Prime Contract defines "Services" as:

… the hauling and stockpiling of crushed aggregate by JMB as set out in this Agreement and anything else which is required to be done to give effect to this Agreement.

3. On or about December 2019, JMB retained Shamrock to haul gravel/aggregate to the MD Stockpile Lands. A copy of title to the MD Stockpile Lands is attached to this Affidavit as **Exhibit A.**

4. Between approximately December 2019 to March 2020, in accordance with the terms agreed between Shamrock and JMB, Shamrock did transport gravel/aggregate to and stockpile gravel/aggregate at the MD's Stockpile Lands (referred to as the "**Shamrock Services**"). The last day Shamrock supplied the Shamrock Services to JMB was March 21st, 2020.

5. The gravel/aggregate transported and stockpiled by Shamrock to/at the MD Stockpile Lands was, to the best of my knowledge, used or intended to be used by the MD in the maintenance and construction of roads within the Municipal District of Bonnyville, including but not limited to surfacing work on Highway 660 and Range Road 55.

6. Shamrock issued two invoices to JMB for the Shamrock Services, for the total amount of $18,969.56, broken down as follows:

Invoice No. IN054325	$ 1,012.32
Invoice No. IN054741	$17,053.92
Subtotal:	$18,066.24
GST @ 5%	$ 903.31
	$18,969.55

7. A copy of Shamrock's Invoice No. IN054325 is attached to this Affidavit as **Exhibit B.** A copy of Shamrock's Invoice No. IN054741 is attached to this Affidavit as **Exhibit C.**

8. On or about April 24th, 2020, Shamrock (through its legal counsel) served upon JMB and the MD, written notice of Shamrock's demand for payment of the amounts owing from JMB to Shamrock for the Shamrock Services, as well as written notice of Shamrock's claim pursuant to section 14 of the *Public Works Act*, RSA 2000 c. P-46 [Public Works Act]. A copy of the letter dated April 24th, 2020 from my lawyer to the MD and JMB is attached to this Affidavit as **Exhibit D**. As of the date of this Affidavit, Shamrock has not received any response from the MD regarding Shamrock's notice of its claim pursuant to the *Public Works Act*.

9. On or about May 26th, 2020, Shamrock (through its legal counsel) served upon FTI Consulting Canada Inc. being the Monitor in the within court action (through the Monitor's legal counsel) Shamrock's Lien Notice. A copy of Shamrock's Lien Notice is attached to this Affidavit as **Exhibit E.**

10. On or about July 27th, 2020, the Monitor served its Lien Determination Notice on Shamrock, wherein the Monitor determined that Shamrock's Lien Claim is not a valid Lien or Lien Claim. A copy of the Monitor's Lien Determination Notice is attached to this Affidavit as **Exhibit F**.

11. As of the date of this Affidavit, despite repeated demands, JMB has failed and refused to pay the amount owing by JMB to Shamrock for the Shamrock Services. The amount of $18,969.55 remains outstanding.

12. I understand from review of the records in the within proceedings, and I do believe, that the MD paid JMB (as prime contractor in respect of the Prime Contract) for the Shamrock Services performed by Shamrock.

SWORN (OR AFFIRMED) BEFORE ME at Elk Point, Alberta, this 6th day of November, 2020.

(Commissioner for Oaths in and for the Province of Alberta)

PRINT NAME AND EXPIRY OF COMMISSIONER OF OATHS Exp. Aug 29, 2021

(Signature)

MURRY NIELSEN

This **is Exhibit A** referred to in the affidavit of Murry Nielsen sworn before me on November 6th, 2020.

A Commissioner of Oaths for
the Province of Alberta

PRINT NAME AND EXPIRY OF COMMISSIONER OF OATHS

Exp. Aug 29, 2021

LAND TITLE CERTIFICATE

S

LINC	SHORT LEGAL	TITLE NUMBER
0034 014 175	4;5;61;19;NE	122 412 899

LEGAL DESCRIPTION

MERIDIAN 4 RANGE 5 TOWNSHIP 61
SECTION 19
QUARTER NORTH EAST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT:

		HECTARES	(ACRES) MORE OR LESS
A) PLAN 8622670	ROAD	0.416	1.03
B) PLAN 0023231	DESCRIPTIVE	2.02	4.99
C) PLAN 0928625	SUBDIVISION	20.22	49.96

EXCEPTING THEREOUT ALL MINES AND MINERALS

ESTATE: FEE SIMPLE

MUNICIPALITY: MUNICIPAL DISTRICT OF BONNYVILLE NO. 87

REFERENCE NUMBER: 092 310 481 +1

REGISTERED OWNER(S)

REGISTRATION	DATE(DMY)	DOCUMENT TYPE	VALUE	CONSIDERATION
122 412 899	14/12/2012	TRANSFER OF LAND	$1,100,000	$1,100,000

OWNERS

THE MUNICIPAL DISTRICT OF BONNYVILLE NO. 87.
OF 4905-50 AVE,BAG 1010
BONNYVILLE
ALBERTA T9N 2J7

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
912 156 474	24/06/1991	UTILITY RIGHT OF WAY GRANTEE - ALTAGAS UTILITIES INC. 5509-45TH ST LEDUC

(CONTINUED)

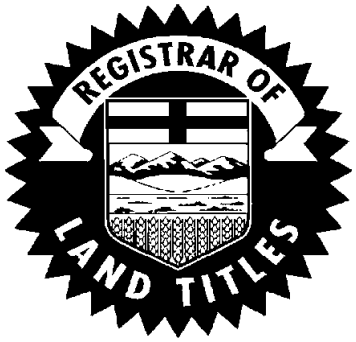
REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		ALBERTA T9E6T6 (DATA UPDATED BY: CHANGE OF NAME 202199056)
912 340 529	11/12/1991	DISCHARGE OF UTILITY RIGHT OF WAY 912156474 PARTIAL EXCEPT PLAN/PORTION: 9121747
972 184 590	25/06/1997	CAVEAT RE : UTILITY RIGHT OF WAY CAVEATOR - ALTAGAS UTILITIES INC. 5509-45TH ST LEDUC ALBERTA T9E6T6 AGENT - MYRNA KING (DATA UPDATED BY: CHANGE OF NAME 202199057)
982 036 883	05/02/1998	DISCHARGE OF CAVEAT 972184590 PARTIAL EXCEPT PLAN/PORTION: 9722851
002 241 364	21/08/2000	CAVEAT RE : ROAD WIDENING CAVEATOR - THE MUNICIPAL DISTRICT OF BONNYVILLE NO. 87. BAG 1010 BONNYVILLE ALBERTA T9N2J7 AGENT - ROBERT A DOONANCO
092 310 470	01/09/2009	CAVEAT RE : ROADWAY CAVEATOR - HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA AS REPRESENTED BY MINISTER OF TRANSPORTATION 2ND FLOOR, TWIN ATRIA BUILDING 4999 - 98 AVENUE NW EDMONTON ALBERTA T6B2X3

TOTAL INSTRUMENTS: 006

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 6 DAY OF NOVEMBER, 2020 AT 02:54 P.M.

ORDER NUMBER: 40470666

CUSTOMER FILE NUMBER: Shamrock JMB



END OF CERTIFICATE

This **is Exhibit B** referred to in the affidavit of Murry Nielsen sworn before me on November 6th, 2020.

A Commissioner of Oaths for
the Province of Alberta

PRINT NAME AND EXPIRY OF COMMISSIONER OF OATHS

P.O. Box 505
Elk Point, Alberta T0A 1A0
Tel: (780)724-3177
Fax: (780)724-2280

"Family owned and Operated since 1985"

Sold To: JMB CRUSHING SYSTEMS ULC
ar@jmbcrush.com (Trucking Invoices)
ap@jmbcrush.com (All Others)
BOX 6977
BONNYVILLE, AB T9N 2H4

Invoice Number: IN054325
P.O. #
Date: 2019-12-31
Cust# JMB100

Item No.	Description/Comments	Quantity	UOM	Unit Price	Amount
FIELD800	DECEMBER 2019 TRUCKING ELLIS DON INDUSTRIAL INC.	1.00	EA	61,001.87	61,001.87
FIELD	MD OF BONNYVILLE	1.00	EACH	1,012.32	1,012.32

Comments:

Subtotal	62,014.19
GST @ 5% GST #104816277	3,100.70
TOTAL	**65,114.89**

"If you spend your whole life waiting for the storm, you'll never enjoy the sunshine!"

This **is Exhibit C** referred to in the affidavit of Murry Nielsen sworn before me on November 6th, 2020.

A Commissioner of Oaths for
the Province of Alberta

PRINT NAME AND EXPIRY OF COMMISSIONER OF OATHS
Exp. Aug 29, 2021

SHAMROCK VALLEY ENT. LTD.

P.O. Box 505
Elk Point, Alberta T0A 1A0
Tel: (780)724-3177
Fax: (780)724-2280

"Family owned and Operated since 1985"

Sold To: JMB CRUSHING SYSTEMS ULC
ar@jmbcrush.com (Trucking Invoices)
ap@jmbcrush.com (All Others)
BOX 6977
BONNYVILLE, AB T9N 2H4

Invoice Number: IN054741
P.O. #
Date: 2020-03-31
Cust# JMB100

Item No.	Description/Comments	Quantity	UOM	Unit Price	Amount
FIELD	March 2020 Hauls MD of Bonnyville Hauls	1.00	EACH	17,053.92	17,053.92
FIELD800	Ellis Don Industrial (Nowchuk)	1.00	EA	17,282.36	17,282.36
FIELD800	Ellis Don Industrial (Other)	1.00	EA	2,904.33	2,904.33

Comments:

Subtotal	37,240.61
GST @ 5% GST #104816277	1,862.03
TOTAL	**39,102.64**

"If you spend your whole life waiting for the storm, you'll never enjoy the sunshine!"

This **is Exhibit D** referred to in the affidavit of Murry Nielsen sworn before me on November 6th, 2020.

A Commissioner of Oaths for
the Province of Alberta

PRINT NAME AND EXPIRY OF COMMISSIONER OF OATHS
Exp. Aug 29, 2021

MORROW TCHIR LLP

BARRISTERS, SOLICITORS &
NOTARIES PUBLIC

ORVILLE T.G. MORROW, BA LLB (1946-2016)
CHRISTINA L. TCHIR, BA LLB* (cltchir@morrowtchir.ca)
JAMES E. MORROW, BA LLB* (jemorrow@morrowtchir.ca)
SIMONE R. MULKAY, BA JD** (srmulkay@morrowtchir.ca)
CAELEIGH V. SHIER, BComm LLB** (cvshier@morrowtchir.ca)

P.O. BOX 336, 5226 - 50 AVENUE
ST. PAUL, ALBERTA T0A 3A0
TELEPHONE: (780)645-2981
FAX: (780) 645-3801
www.morrowtchir.ca

*denotes Professional Corporation and Member of Limited Liability Partnership
**denotes Associate

Our File: 19978/20 CT
Your File:

April 24, 2020

Municipal District of Bonnyville No. 87
4905 - 50 Avenue
Bag 1010
Bonnyville, AB T9N 2J7

Via Registered Mail

Alberta Infrastructure
Procurement Section
Tender Administrator
2nd Floor, 6950 113 Street
Edmonton, AB T6H 5V7

Via Registered Mail

Dear Sir/Madam:

RE: Claimant: Shamrock Valley Enterprises Ltd. ("Shamrock")
Debtor: JMB Crushing Systems Inc. ("JMB")
Public Works Act Claim - Hwy 660 and Range Road 55 within M.D. of Bonnyville
Amount of Claim: $18,969.59

We represent Shamrock Valley Enterprises Ltd. ("**Shamrock**"). Shamrock is owed the sum of $18,969.59 from JMB Crushing Systems Inc. ("**JMB**") for gravel transported to and stockpiled on land owned by the M.D. of Bonnyville No. 87 (the "**M.D. of Bonnyville**"), which gravel will be used by the M.D. of Bonnyville for road work on highways and municipal roads within the M.D. of Bonnyville. This letter with all enclosures is to serve as notice of the claim by Shamrock pursuant to section 14 of the *Public Works Act*, RSA 2000 c. P-46 [*Public Works Act*].

Pursuant to section 14 of the *Public Works Act*, when a person provides labour, equipment, material or services used or reasonably required for use in the performance of a contract with the Crown for the construction, alteration, demolition, repair, or maintenance of a public work, and the person is not paid by the party who is legally obligated to pay that person, the person may send notice of that person's claim to the Minister, or the agent of the Crown that is responsible for the public work.

Shamrock has provided labour, equipment, materials and services used or reasonably required for use in the performance of a contract with the M.D. of Bonnyville. In this context, the M.D. of Bonnyville is acting as an agent of the Crown, being Her Majesty the Queen in right of Alberta (ie: the Province of Alberta). The labour, equipment, materials and services provided by Shamrock were used by the M.D. of Bonnyville for road work on highways and roads within the M.D. of Bonnyville. All provincial highways and municipal roads within the Municipal District of Bonnyville are "public works" within the meaning of the *Public Works Act*, and are also "highways and roads" within the meaning of section 1 of Schedule 14 of the *Government Organization Act*, RSA 2000, c. G-10. As such, Shamrock's claim falls under section 14 of the *Public Works Act*.

Shamrock hereby provides notice of its claim to the M.D. of Bonnyville, being the agent of the Crown responsible for the applicable roads and highways. Out of an abundance of caution, Shamrock is also providing a copy of this letter to Alberta Infrastructure.

The particulars of the Shamrock's claim are as follows:

1. The M.D. of Bonnyville contracted with JMB for JMB to supply gravel for use by the M.D. of Bonnyville in highway and road improvements.
2. JMB subcontracted with Shamrock for Shamrock to transport gravel to and stockpile gravel at the M.D. of Bonnyville's stockpile location, being NE 19-61-5 W4.
3. In accordance with the agreed terms, Shamrock did transport gravel to and stockpile gravel at the M.D. of Bonnyville's stockpile location, the last day such labour, equipment, materials and services were provided by Shamrock being March 21, 2020.
4. The gravel transported and stockpiled by Shamrock was used by the M.D. of Bonnyville in the maintenance and construction of roads within the M.D. of Bonnyville, including but not limited to surfacing work on Highway 660 and Range Road 55.
5. JMB has failed or refused to pay Shamrock for these labour, equipment, materials and services.
6. The amount owing from JMB to Shamrock in respect of the gravel transported to and stockpiled at the M.D. of Bonnyville's stockpile location is $18,969.56, calculated as follows:

Invoice No. IN054325	$ 1,012.32
Invoice No. IN054741	$ 17,053.92
GST @ 5%	$ 903.31
Total Outstanding	$ 18,969.55.

We enclose the following in support of Shamrock's claim:

- The completed Public Works Act Claim Form; and
- Copies of Shamrock's unpaid Invoice No. IN054325 and unpaid Invoice No. IN054741.

Pursuant to section 15 of the *Public Works Act*, the M.D. of Bonnyville may pay Shamrock the full outstanding amount of its claim and deduct the amount so paid from any money due and payable to JMB on any account, or from the money or security, if any, deposited by JMB with the M.D. of Bonnyville. In paying Shamrock's claim, the M.D. of Bonnyville may act on any evidence that it considers sufficient and may compromise any disputed liability, and as against the M.D. of Bonnyville payment is not open to dispute or question by JMB, but is final and binding on JMB. Alternatively, the M.D. of Bonnyville may pay the money into court on the

terms and conditions determined by the court, following which the court will determine the persons who are entitled to payment of the money and direct payment accordingly.

Shamrock requests that the M.D. of Bonnyville forthwith pay Shamrock the amount owing by JMB to Shamrock, being the sum of $18,969.56, and such amount be deducted from any amount owing by the M.D. of Bonnyville to JMB, as is permitted by section 15 of the *Public Works Act*. Shamrock demands that no further sum be paid by the M.D. of Bonnyville to JMB until such time as Shamrock's outstanding claim is resolved.

The M.D. of Bonnyville has benefited from the gravel transported and stockpiled by Shamrock. It is unjust that Shamrock should go unpaid any longer, in particular during these uncertain and economically challenging times. Your quick response in this matter is greatly appreciated. Please do not hesitate to contact me to discuss this matter.

Yours truly,

MORROW TCHIR LLP

Per: 

CHRISTINA L. TCHIR
Barrister, Solicitor and Notary Public
CVS/clt

Cc: JMB Crushing Systems Inc.
c/o Ogilvie LLP
1400 – 103030 Jasper Avenue NW
Edmonton, AB T5N 3Y4
Via registered mail

Cc: Client
Via email

Alberta
Infrastructure

Statement of Public Works Act Claim

Submit completed claim form by **"Registered Mail"** to:

Tender Administrator
Procurement Section,
Alberta Infrastructure,
2nd Floor, 6950-113 Street, Edmonton, Alberta T6H 5V7
Telephone: (780) 427-3962 Fax: (780) 422-9686

Claimant

Name				
Shamrock Valley Enterprises Ltd.				
Address				City or Town
c/o Morrow Tchir LLP PO Box 336, 5226 50 Avenue				St. Paul
Province	Postal Code	Telephone	Fax	E-mail Address
Alberta	T0A 3A0	7806452981	7806453801	cltchir@morrowtchir.ca

Project

This claim is made in respect of the following project: (location & description)	Legal Description of the Land:
Road maintenance and construction throughout highways and municipal roads within the M.D. of Bonnyville No. 87 Project ID / Plan No: (either or both, if known)	Stockpile Location: NE 19-61-5 W4 (Highway 660 and Range Road 55) Roadwork completed on various highways and municipal roads within the M.D. of Bonnyville No. 87

Details of Claim

1 Our contract is with (name of contracting party): (and General Contractor, if known)

JMB Crushing Systems Inc.

2 This claim is made in respect of the following work (provide short description of labour, equipment, materials or services provided):

Transport and stockpiling of gravel for use in roadwork in M.D. of Bonnyville.

3 Time: (Last day on which labour, equipment, materials or services were provided)

☑ The work related to this claim was fully performed on: March (Month (name of)) 21 (Day) 2020 (Year)

OR

☐ The work related to this claim is not yet fully performed but payment for work performed to _____ (Month (name of)) _____ (Day) _____ (Year)

(Today's Date)

has not been received as of _____ (Month (name of)) _____ (Day) _____ (Year)

4 Amount

The amount of this claim is $ 18,969.56 , which includes $ 0.00 in holdback monies.

5 Declaration:

I, the undersigned, am or represent the claimant named above and declare that the information provided is true and correct;

Christina L. Tchir Lawyer for Claimant
Printed name of declarant

Signature of declarant

For Alberta Infrastructure Use Only

Contract ID.:	Plan No. or Building No.	Confirmed Project ID.:	Date Sent:	Date Received:	Date Acknowledged:
Comments:					

SHAMROCK VALLEY ENT. LTD.

P.O. Box 505
Elk Point, Alberta T0A 1A0
Tel: (780)724-3177
Fax: (780)724-2280

"Family owned and Operated since 1985"

Sold To: JMB CRUSHING SYSTEMS ULC
ar@jmbcrush.com (Trucking Invoices)
ap@jmbcrush.com (All Others)
BOX 6977
BONNYVILLE, AB T9N 2H4

Invoice Number: IN054325
P.O. #
Date: 2019-12-31
Cust# JMB100

Item No.	Description/Comments	Quantity	UOM	Unit Price	Amount
FIELD800	DECEMBER 2019 TRUCKING ELLIS DON INDUSTRIAL INC.	1.00	EA	61,001.87	61,001.87
FIELD	MD OF BONNYVILLE	1.00	EACH	1,012.32	1,012.32

Comments:

Subtotal	62,014.19
GST @ 5% GST #104816277	3,100.70
TOTAL	**65,114.89**

"If you spend your whole life waiting for the storm, you'll never enjoy the sunshine!"

SHAMROCK VALLEY ENT. LTD.

P.O. Box 505
Elk Point, Alberta T0A 1A0
Tel: (780)724-3177
Fax: (780)724-2280

"Family owned and Operated since 1985"

Sold To: JMB CRUSHING SYSTEMS ULC
ar@jmbcrush.com (Trucking Invoices)
ap@jmbcrush.com (All Others)
BOX 6977
BONNYVILLE, AB T9N 2H4

Invoice Number: IN054741
P.O. #
Date: 2020-03-31
Cust# JMB100

Item No.	Description/Comments	Quantity	UOM	Unit Price	Amount
FIELD	March 2020 Hauls MD of Bonnyville Hauls	1.00	EACH	17,053.92	17,053.92
FIELD800	Ellis Don Industrial (Nowchuk)	1.00	EA	17,282.36	17,282.36
FIELD800	Ellis Don Industrial (Other)	1.00	EA	2,904.33	2,904.33

Comments:

Subtotal	37,240.61
GST @ 5% GST #104816277	1,862.03
TOTAL	**39,102.64**

"If you spend your whole life waiting for the storm, you'll never enjoy the sunshine!"

This **is Exhibit E** referred to in the affidavit of Murry Nielsen sworn before me on November 6th, 2020.

A Commissioner of Oaths for
the Province of Alberta

PRINT NAME AND EXPIRY OF COMMISSIONER OF OATHS

Exp. Aug 29, 2021.

Schedule "A"
Lien Notice

Claimant: Shamrock Valley Enterprises Ltd.

Address for Notices: c/o Morrow Tchir LLP, 5226 50 Ave, PO Box 336, St. Paul, AB T0A 3A0

Telephone: 780-645-2981

Fax: 780-645-3801

Email: cltchir@morrowtchir.ca

I, Murry Nielsen (name) **residing in the** Town (city, town, etc.) **of** Elk Point (name of city, town, etc.) **in the Province of** Alberta (name of province)

do hereby certify that:

1. ☐ I am the Claimant

OR ☑ I am the Director (title/position) of the Claimant

2. I have knowledge of all the circumstances connected with the claim referred to in this Lien Notice form.

3. The Claimant has a valid

✓or claim pursuant to the Alberta Public Works Act, RSA 2000, c. P46✓

(a) **Builders' Lien Claim** in the amount of $18,969.59 arising pursuant to work done or materials furnished on behalf of JMB Crushing Systems Inc.

(b) **Subrogated Claim** in the amount of $_____ arising pursuant to work done or materials furnished on behalf of JMB Crushing Systems Inc.

4. Attached hereto as Schedule "A" is an affidavit setting out the full particulars of the Claimant's builders' lien claim or subrogated claim, including all applicable contracts,

sub-contracts, the nature of the work completed or materials furnished, the last day on which any work was completed or materials were furnished, any payments received by the Claimant, all invoices issued by the Claimant, and all written notices of a lien served by the Claimant.

DATED at Elk Point (location), this 25th day of May, 2020.

Witness

Name: Brandy Poliakiwski

Name: Murry Nielsen
Director of Shamrock Valley Enterprises Ltd.

Must be signed and witnessed

AFFIDAVIT OF Murry Nielsen
as corporate representative of Shamrock Valley Enterprises Ltd.

Sworn (or Affirmed) on the 25th day of May, 2020.

I, Murry Nielsen, in my capacity as corporate representative of Shamrock Valley Enterprises Ltd., of Elk Point, Alberta, SWEAR/AFFIRM AND SAY THAT:

1. I verily believe that the M.D. of Bonnyville contracted with JMB Crushing Systems Inc. ("**JMB**") for JMB to supply gravel for use by the M.D. of Bonnyville in highway and road improvements.

2. JMB subcontracted with Shamrock Valley Enterprises Ltd. ("**Shamrock**") for Shamrock to transport gravel to and stockpile gravel at the M.D. of Bonnyville's stockpile location, being NE 19-61-5 W4.

3. In accordance with the agreed terms, Shamrock did transport gravel to and stockpile gravel at the M.D. of Bonnyville's stockpile location, the last day such labour, equipment, materials and services were provided by Shamrock being March 21, 2020.

4. The gravel transported and stockpiled by Shamrock was, to the best of my knowledge, used or intended to be used by the M.D. of Bonnyville in the maintenance and construction of roads within the M.D. of Bonnyville, including but not limited to surfacing work on Highway 660 and Range Road 55.

5. JMB has failed or refused to pay Shamrock for the labour, equipment, materials and services provided by Shamrock.

6. The amount owing from JMB to Shamrock in respect of the gravel transported to and stockpiled at the M.D. of Bonnyville's stockpile location is $18,969.56, calculated as follows:

Invoice No. IN054325	$ 1,012.32
Invoice No. IN054741	$ 17,053.92
GST @ 5%	$ 903.31
Total Outstanding	$ 18,969.55.

7. On or about April 24, 2020, Shamrock served notice of its claim to the outstanding amount of $18,969.56 on JMB, the M.D. of Bonnyville and on Alberta Infrastructure, as follows:
   a. Letter to JMB, the M.D. of Bonnyville and Alberta Infrastructure setting out particulars of Shamrock's claim – copy attached to this Affidavit as **Exhibit "A"**
   b. Statement of Public Works Act Claim – copy attached to this Affidavit as **Exhibit "B"**.
8. A copy of Shamrock's Invoice No. IN054325 is attached to this Affidavit as **Exhibit "C"**.
9. A copy of Shamrock's Invoice No IN054741 is attached to this Affidavit as **Exhibit "D"**.

SWORN (OR AFFIRMED) BEFORE ME at the town/city of Elk Point Alberta, this 25th day of May, 2020.

(Commissioner for Oaths in and for the Province of Alberta)
Brandy Poliakiwski
Expiry Date: August 29, 2021

Murry Nielsen
Director of Shamrock Valley Enterprises Ltd.
(Signature)

This is Exhibit "A" to the Affidavit of Murry Nielsen sworn/affirmed on the 25 day of May, 2020.

Commissioner for Oaths
for the Province of Alberta

Brandy Poliakiwski
Expiry Date:
Aug 29, 2021

MORROW TCHIR LLP

BARRISTERS, SOLICITORS &
NOTARIES PUBLIC

ORVILLE T.G. MORROW, BA LLB (1946-2016)
CHRISTINA L. TCHIR, BA LLB* (cltchir@morrowtchir.ca)
JAMES E. MORROW, BA LLB* (jemorrow@morrowtchir.ca)
SIMONE R. MULKAY, BA JD** (srmulkay@morrowtchir.ca)
CAELEIGH V. SHIER, BComm LLB** (cvshier@morrowtchir.ca)

P.O. BOX 336, 5226 - 50 AVENUE
ST. PAUL, ALBERTA T0A 3A0
TELEPHONE: (780)645-2981
FAX: (780) 645-3801
www.morrowtchir.ca

*denotes Professional Corporation and Member of Limited Liability Partnership
**denotes Associate

Our File: 19978/20 CT
Your File:

April 24, 2020

Municipal District of Bonnyville No. 87
4905 - 50 Avenue
Bag 1010
Bonnyville, AB T9N 2J7

Via Registered Mail

Alberta Infrastructure
Procurement Section
Tender Administrator
2nd Floor, 6950 113 Street
Edmonton, AB T6H 5V7

Via Registered Mail

Dear Sir/Madam:

RE: Claimant: Shamrock Valley Enterprises Ltd. ("Shamrock")
Debtor: JMB Crushing Systems Inc. ("JMB")
Public Works Act Claim - Hwy 660 and Range Road 55 within M.D. of Bonnyville
Amount of Claim: $18,969.59

We represent Shamrock Valley Enterprises Ltd. ("**Shamrock**"). Shamrock is owed the sum of $18,969.59 from JMB Crushing Systems Inc. ("**JMB**") for gravel transported to and stockpiled on land owned by the M.D. of Bonnyville No. 87 (the "**M.D. of Bonnyville**"), which gravel will be used by the M.D. of Bonnyville for road work on highways and municipal roads within the M.D. of Bonnyville. This letter with all enclosures is to serve as notice of the claim by Shamrock pursuant to section 14 of the *Public Works Act*, RSA 2000 c. P-46 [*Public Works Act*].

Pursuant to section 14 of the *Public Works Act*, when a person provides labour, equipment, material or services used or reasonably required for use in the performance of a contract with the Crown for the construction, alteration, demolition, repair, or maintenance of a public work, and the person is not paid by the party who is legally obligated to pay that person, the person may send notice of that person's claim to the Minister, or the agent of the Crown that is responsible for the public work.

Shamrock has provided labour, equipment, materials and services used or reasonably required for use in the performance of a contract with the M.D. of Bonnyville. In this context, the M.D. of Bonnyville is acting as an agent of the Crown, being Her Majesty the Queen in right of Alberta (ie: the Province of Alberta). The labour, equipment, materials and services provided by Shamrock were used by the M.D. of Bonnyville for road work on highways and roads within the M.D. of Bonnyville. All provincial highways and municipal roads within the Municipal District of Bonnyville are "public works" within the meaning of the *Public Works Act*, and are also "highways and roads" within the meaning of section 1 of Schedule 14 of the *Government Organization Act*, RSA 2000, c. G-10. As such, Shamrock's claim falls under section 14 of the *Public Works Act*.

Shamrock hereby provides notice of its claim to the M.D. of Bonnyville, being the agent of the Crown responsible for the applicable roads and highways. Out of an abundance of caution, Shamrock is also providing a copy of this letter to Alberta Infrastructure.

The particulars of the Shamrock's claim are as follows:

1. The M.D. of Bonnyville contracted with JMB for JMB to supply gravel for use by the M.D. of Bonnyville in highway and road improvements.
2. JMB subcontracted with Shamrock for Shamrock to transport gravel to and stockpile gravel at the M.D. of Bonnyville's stockpile location, being NE 19-61-5 W4.
3. In accordance with the agreed terms, Shamrock did transport gravel to and stockpile gravel at the M.D. of Bonnyville's stockpile location, the last day such labour, equipment, materials and services were provided by Shamrock being March 21, 2020.
4. The gravel transported and stockpiled by Shamrock was used by the M.D. of Bonnyville in the maintenance and construction of roads within the M.D. of Bonnyville, including but not limited to surfacing work on Highway 660 and Range Road 55.
5. JMB has failed or refused to pay Shamrock for these labour, equipment, materials and services.
6. The amount owing from JMB to Shamrock in respect of the gravel transported to and stockpiled at the M.D. of Bonnyville's stockpile location is $18,969.56, calculated as follows:

Invoice No. IN054325	$ 1,012.32
Invoice No. IN054741	$ 17,053.92
GST @ 5%	$ 903.31
Total Outstanding	$ 18,969.55.

We enclose the following in support of Shamrock's claim:

- The completed Public Works Act Claim Form; and
- Copies of Shamrock's unpaid Invoice No. IN054325 and unpaid Invoice No. IN054741.

Pursuant to section 15 of the *Public Works Act*, the M.D. of Bonnyville may pay Shamrock the full outstanding amount of its claim and deduct the amount so paid from any money due and payable to JMB on any account, or from the money or security, if any, deposited by JMB with the M.D. of Bonnyville. In paying Shamrock's claim, the M.D. of Bonnyville may act on any evidence that it considers sufficient and may compromise any disputed liability, and as against the M.D. of Bonnyville payment is not open to dispute or question by JMB, but is final and binding on JMB. Alternatively, the M.D. of Bonnyville may pay the money into court on the

terms and conditions determined by the court, following which the court will determine the persons who are entitled to payment of the money and direct payment accordingly.

Shamrock requests that the M.D. of Bonnyville forthwith pay Shamrock the amount owing by JMB to Shamrock, being the sum of $18,969.56, and such amount be deducted from any amount owing by the M.D. of Bonnyville to JMB, as is permitted by section 15 of the *Public Works Act*. Shamrock demands that no further sum be paid by the M.D. of Bonnyville to JMB until such time as Shamrock's outstanding claim is resolved.

The M.D. of Bonnyville has benefited from the gravel transported and stockpiled by Shamrock. It is unjust that Shamrock should go unpaid any longer, in particular during these uncertain and economically challenging times. Your quick response in this matter is greatly appreciated. Please do not hesitate to contact me to discuss this matter.

Yours truly,

MORROW TCHIR LLP

Per:

CHRISTINA L. TCHIR
Barrister, Solicitor and Notary Public
CVS/clt

Cc: JMB Crushing Systems Inc.
c/o Ogilvie LLP
1400 – 103030 Jasper Avenue NW
Edmonton, AB T5N 3Y4
Via registered mail

Cc: Client
Via email

This is Exhibit "B" to the Affidavit of Murry Nielsen sworn/affirmed on the 25th day of May, 2020

Commissioner for Oaths for the Province of Alberta

Brandy Poliakiwski
Expiry Date: August 29, 2021

Alberta Infrastructure

Statement of Public Works Act Claim

Submit completed claim form by "Registered Mail" to:

Tender Administrator
Procurement Section,
Alberta Infrastructure,
2nd Floor, 6950-113 Street, Edmonton, Alberta T6H 5V7
Telephone: (780) 427-3962 Fax: (780) 422-9686

Claimant

Name				
Shamrock Valley Enterprises Ltd.				
Address				**City or Town**
c/o Morrow Tchir LLP PO Box 336, 5226 50 Avenue				St. Paul
Province	**Postal Code**	**Telephone**	**Fax**	**E-mail Address**
Alberta	T0A 3A0	7806452981	7806453801	cltchir@morrowtchir.ca

Project

This claim is made in respect of the following project: (location & description)	Legal Description of the Land:
Road maintenance and construction throughout highways and municipal roads within the M.D. of Bonnyville No. 87 Project ID / Plan No: (either or both, if known)	Stockpile Location: NE 19-61-5 W4 (Highway 660 and Range Road 55) Roadwork completed on various highways and municipal roads within the M.D. of Bonnyville No. 87

Details of Claim

1 Our contract is with (name of contracting party): (and General Contractor, if known)

JMB Crushing Systems Inc.

2 This claim is made in respect of the following work (provide short description of labour, equipment, materials or services provided):

Transport and stockpiling of gravel for use in roadwork in M.D. of Bonnyville.

3 Time: (Last day on which labour, equipment, materials or services were provided)

☑ The work related to this claim was fully performed on: March (Month (name of)) 21 (Day) 2020 (Year)

OR

☐ The work related to this claim is not yet fully performed but payment for work performed to _____ (Today's Date) (Month (name of)) _____ (Day) _____ (Year)

has not been received as of _____ (Month (name of)) _____ (Day) _____ (Year)

4 Amount

The amount of this claim is $ 18,969.56 , which includes $ 0.00 in holdback monies.

5 Declaration:

I, the undersigned, am or represent the claimant named above and declare that the information provided is true and correct;

Christina L. Tchir Lawyer for Claimant
Printed name of declarant

Signature of declarant

For Alberta Infrastructure Use Only

Contract ID.:	Plan No. or Building No.	Confirmed Project ID.:	Date Sent:	Date Received:	Date Acknowledged:

Comments:

Rev. 2014-01-03

AI/MS Form 00 73 90A eForm

This is Exhibit "C" to the Affidavit
of Murry Nielsen sworn on
the 25 day of May, 2020.

Commissioner for Oaths
For the Province of Alberta

Brandy Poliakiwski
Expiry Date: August 29, 2021

SHAMROCK VALLEY ENT. LTD.
P.O. Box 505
Elk Point, Alberta T0A 1A0
Tel: (780)724-3177
Fax: (780)724-2280

"Family owned and Operated since 1985"

Sold To: JMB CRUSHING SYSTEMS ULC
ar@jmbcrush.com (Trucking Invoices)
ap@jmbcrush.com (All Others)
BOX 6977
BONNYVILLE, AB T9N 2H4

Invoice Number: IN054325
P.O. #
Date: 2019-12-31
Cust# JMB100

Item No.	Description/Comments	Quantity	UOM	Unit Price	Amount
FIELD800	DECEMBER 2019 TRUCKING ELLIS DON INDUSTRIAL INC.	1.00	EA	61,001.87	61,001.87
FIELD	MD OF BONNYVILLE	1.00	EACH	1,012.32	1,012.32

Comments:

Subtotal	62,014.19
GST @ 5% GST #104816277	3,100.70
TOTAL	65,114.89

"If you spend your whole life waiting for the storm, you'll never enjoy the sunshine!"

Page 1

This is Exhibit "D" to the Affidavit
of Murry Nielsen sworn on
the 25 day of May, 2020

Commissioner for Oaths
for the Province of Alberta

Brandy Poliakiwski
Expiry Date: August 29, 2021

SHAMROCK VALLEY ENT. LTD.
P.O. Box 505
Elk Point, Alberta T0A 1A0
Tel: (780)724-3177
Fax: (780)724-2280

"Family owned and Operated since 1985"

Sold To: JMB CRUSHING SYSTEMS ULC
ar@jmbcrush.com (Trucking Invoices)
ap@jmbcrush.com (All Others)
BOX 6977
BONNYVILLE, AB T9N 2H4

Invoice Number: IN054741
P.O. #
Date: 2020-03-31
Cust# JMB100

Item No.	Description/Comments	Quantity	UOM	Unit Price	Amount
FIELD	March 2020 Hauls MD of Bonnyville Hauls	1.00	EACH	17,053.92	17,053.92
FIELD800	Ellis Don Industrial (Nowchuk)	1.00	EA	17,282.36	17,282.36
FIELD800	Ellis Don Industrial (Other)	1.00	EA	2,904.33	2,904.33

Comments:

Subtotal	37,240.61
GST @ 5% GST #104816277	1,862.03
TOTAL	39,102.64

"If you spend your whole life waiting for the storm, you'll never enjoy the sunshine!"

Page 1

This **is Exhibit F** referred to in the affidavit of Murry Nielsen sworn before me on November 6th, 2020.

A Commissioner of Oaths for
the Province of Alberta

PRINT NAME AND EXPIRY OF COMMISSIONER OF OATHS

Exp. Aug 29, 2021.

DETERMINATION NOTICE FOR LIEN CLAIMS AGAINST JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD. (COLLECTIVELY, "JMB")

DETERMINATION NOTICE

TO: Shamrock Valley Enterprises Ltd. (the "Lien Claimant")
c/o Morrow Tchir LLP
5226 50 Avenue, PO Box 336
St. Paul, AB T0A 3A0
Attention: Christina Tchir

DATE: July 27, 2020

LIEN CLAIM:

Date of Lien Notice / Registration:	May 25, 2020
Quantum Originally Claimed:	$18,969.59
Affected Lands:	NE 19-61-5 W4

Take notice that FTI Consulting Canada Inc., in its capacity as the Court-appointed monitor (the "**Monitor**") of JMB, pursuant to the CCAA Initial Order granted on May 1, 2020, as subsequently amended and restated on May 11, 2020 (the "**Amended and Restated CCAA Initial Order**"), has reviewed the Lien Claim you submitted, as part of its Lien Determination pursuant to the Order – Lien Claims – MD of Bonnyville issued by the Court of Queen's Bench of Alberta on May 20, 2020 (the "**Bonnyville Lien Process Order**"). All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Bonnyville Lien Process Order.

The Monitor has made the following Lien Determination concerning your Lien Claim:

Quantum:	$18,969.55
Lien Determination:	The above referenced Lien Claim is not a valid Lien or Lien Claim, for the following reasons: (i) it was not registered or, alternatively, no Lien Notice was provided within the 45 days prescribed by the *BLA*; and, (ii) it does not relate to work done or materials supplied on or in respect of an improvement.

IF YOU WISH TO DISPUTE THE LIEN DETERMINATION, AS SET FORTH HEREIN, YOU MUST TAKE THE STEPS OUTLINED BELOW.

The Bonnyville Lien Process Order provides that if you do not accept with the Monitor's Lien Determination, as set out in this Determination Notice, you must, within fifteen days of receipt of this Determination Notice from the Monitor, file an application before the Court of Queen's Bench

of Alberta for the determination of your Lien and Lien Claim. If you fail to file an application before the Court of Queen's Bench of Alberta, in the timeframe specified herein, the Lien Determination of the Monitor shall be final and neither you nor JMB shall have any further recourse to any remedies set out in the BLA with respect to the Liens or Lien Claims referenced herein or as and against any of the Funds or the Holdback Amount, except as otherwise may be ordered by the Court.

If you have any questions regarding the claims process or the attached materials, please contact the Monitor's counsel, Pantelis Kyriakakis of McCarthy Tétrault LLP, at pkyriakakis@mccarthy.ca and the Monitor, Mike Clark of FTI Consulting Canada Inc., at mike.clark@fticonsulting.com.

Dated the 27th day of July, 2020 in Calgary, Alberta.

FTI CONSULTING CANADA INC., in its capacity as Monitor of JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD.

Per: 

Mike Clark, Director

Form 49
Rule 13.19

Clerk's Stamp

COURT FILE NO.	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	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 JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD. AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and MANTLE MATERIALS GROUP, LTD.
APPLICANTS	JMB CRUSHING SYSTEMS INC., 2161889 ALBERTA LTD., and MANTLE MATERIALS GROUP, LTD.
DOCUMENT	**AFFIDAVIT OF JASON PANTER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Gowling WLG (Canada) LLP** 1600, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attn: **Tom Cumming/Caireen E. Hanert/Alison J. Gray** Phone: 403.298.1938/403.298.1992/403.298.1841 Fax: 403.263.9193 File No.: A163514

AFFIDAVIT OF JASON PANTER
sworn October 9, 2020

I, Jason Panter, of the Hamlet of Ardrossan, in the Province of Alberta, **MAKE OATH AND SAY THAT**:

1. I am a Project Manager/Estimator at the Applicant JMB Crushing Systems Inc. ("**JMB**"). As such, I have personal knowledge of the matters herein deposed to, except where stated to be based upon information and belief, in which case I verily believe same to be true.

2. In preparing this Affidavit, I reviewed the business records of JMB relevant to this Application and have satisfied myself that I am possessed of sufficient information and knowledge to swear this Affidavit.

3. I am authorized to swear this Affidavit as corporate representative of JMB.

Background

4. JMB's business is the extraction, processing, transportation and sale of gravel, sand and other aggregates in the Province of Alberta. JMB either directly or through its subsidiary 2161889 Alberta Ltd., has rights of access to over 50 aggregate pits in Alberta through surface material leases with the Province of Alberta and royalty agreements with private individuals or companies, and has freehold title to one aggregate pit. The aggregates are produced to customer specifications and delivery services are provided to various locations in northeastern Alberta.

5. JMB, through its predecessor company JMB Crushing Systems ULC ("**JMB ULC**"), entered into an Aggregates Royalty Agreement (the "**Shankowski Royalty Agreement**") with Jerry Shankowski ("**Shankowski**"). Shankowski is the owner of lands located at SW-21-56-7-W4 (the "**Shankowski Land**").

6. Pursuant to the Shankowski Royalty Agreement, JMB was granted the exclusive right to access the Shankowski Land to explore, prospect for, test, get, process and dispose of aggregates contained in the Shankowski Land. Attached hereto as **Exhibit "A"** is a copy of the Shankowski Royalty Agreement.

7. In exchange for the exclusive rights granted to JMB, JMB was to pay royalties to Shankowski at differing rates depending upon the type and size of the aggregate removed from the Shankowski Land. The royalties were payable 90 days after the aggregate was removed from the Shankowski Land. In the aggregate industry it is common for land owners to grant licenses to aggregate companies in exchange for the payment of royalties on the volume of aggregate extracted from the land.

8. JMB ULC also entered into an Aggregates Royalty Agreement dated November 8, 2018 with Helen and Gail Havener (the "**Havener Royalty Agreement**"). The Estate of Helen Havener and Gail Havener own the land described as NW-16-56-7-W4M (the "**Havener Land**").

9. Pursuant to the Havener Royalty Agreement, JMB was granted the exclusive right to access the Havener Land to explore, prospect for, test, get, process and dispose of aggregates contained in the Havener Land. JMB was also granted the right of first refusal to match any offer to purchase made on the Havener Land. Attached hereto as **Exhibit "B"** is a copy of the Havener Royalty Agreement.

10. In exchange for the exclusive rights granted to JMB, JMB was to pay royalties to the Haveners at differing rates depending upon the type and size of the aggregate removed from the Havener Land. The royalties were payable 90 days after the monthly report of aggregate removed from the Havener Land was produced.

Bonnyville Project

11. On or about November 1, 2013, JMB ULC contracted with the Municipal District of Bonnyville No. 87 (the "**MD of Bonnyville**") for the production, hauling and stockpiling of crushed aggregate materials for use in road construction (the "**Bonnyville Contract**"). Attached hereto as **Exhibit "C"** is a copy of the Bonnyville Contract, as amended.

12. In order to complete the 2020 supply for the Bonnyville Contract, JMB:

    (a) Extracted aggregate from the Shankowski Land. In the aggregates industry, the removal of top soil and overburden to expose the raw aggregate pit run is also often referred to as "stripping". The exposed raw aggregate pit run is then kept in what is referred to as a gravel bank;

    (b) Entered into a Subcontractor Services Agreement with RBEE Aggregate Consulting Ltd. ("**RBEE**"), on or around February 25, 2020, pursuant to which RBEE agreed to provide crushing services to produce gravel from the raw

aggregate pit run. RBEE was to provide crushing services in respect of the Bonnyville Contract;

(c) Between approximately February 25, 2020 and April 8, 2020, RBEE crushed the raw aggregate pit run that was extracted from the Shankowski Land. To do so, RBEE would move the raw aggregate pit run from the gravel bank (also referred to in the industry as "gravel marshalling") to RBEE's mobile crushing unit. This mobile crushing unit was brought onto the Shankowski Land by RBEE to perform the crushing services. Once the crushing services were complete, the mobile crushing unit would be removed from the Shankowski Land and returned to RBEE's premises. Attached hereto as **Exhibit "D"** is a AbaData map of the Shankowski Land and the Havener Land, showing the approximate RBEE crushing footprint;

(d) Asked RBEE to perform some stripping on the Shankowski Land. While JMB did the vast majority of stripping on the Shankowski Land for the Bonnyville Contract, RBEE did perform a small amount of stripping, as JMB did not strip and expose enough raw aggregate pit run to complete the volume of crushing for the 2020 supply for the Bonnyville Contract. RBEE invoiced JMB $7,500 in stripping costs. Attached hereto as **Exhibit "E"** is a copy of the April 16, 2020 invoice from RBEE to JMB;

(e) Engaged J.R. Paine on or about April 1, 2020, to perform aggregate testing services in respect of the Bonnyville Contract. As part of the aggregate testing services provided, J.R. Paine tested the crushed aggregate from the Shankowski Land to ensure it complied with the specifications in the Bonnyville Contract. J.R. Paine's testing services were completed by April 8, 2020. J.R. Paine did not perform any testing services on the Havener Land or of aggregate from the Havener Land in respect of the Bonnyville Contract. Attached hereto as **Exhibits "F"** and **"G"** are copies of the Purchase Order dated April 1, 2020 and the invoices submitted by J.R. Paine to JMB for testing services performed from February 25 to April 8, 2020; and

(f) After the raw aggregate pit run was crushed to contract specifications, stockpiled the aggregate on the Shankowski Land until transported to the MD of Bonnyville yard, where I understand it was stored until needed.

13. RBEE did not crush or extract any raw aggregate pit run from the Havener Land, and no aggregate testing was done by J.R. Paine of aggregate from the Havener Land, in respect of the Bonnyville Contract. Had aggregate been extracted from the Havener Land and supplied to the MD of Bonnyville, JMB would have paid royalties to the Haveners, which it did not. Attached hereto as **Exhibits "H"** and **"I"** are copies of the Havener Royalty Statements for February to April, 2020, and the ticket data showing aggregate hauled by JMB for the supply of the Bonnyville Contract was hauled from the Shankowski Land, which information was used to calculate royalties owing to Shankowski.

The Liens

13. On May 13 and May 15, 2020 respectively, J.R. Paine and RBEE registered liens pursuant to the *Builders Lien Act*, RSA 2000, c B-7, being instrument numbers 202 104 972 (J.R. Paine) and 202 106 449 (RBEE) on title to the Havener Land (the "**Havener Liens**"), which is legally described as:

> MERIDIAN 4 RANGE 7 TOWNSHIP 56
> SECTION 16
> QUARTER NORTH WEST
> CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
> EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
> A) PLAN 4286BM – ROAD 0.0004 0.001
> B) ALL THAT PORTION COMMENCING AT THE SOUTH WEST CORNER OF THE SAID QUARTER SECTION; THENCE EASTERLY ALONG THE SOUTH BOUNDARY
> 110 METRES; THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY
> OF THE SAID QUARTER 110 METRES; THENCE WESTERLY AND PARALLEL TO THE SAID SOUTH BOUNDARY TO A POINT ON THE WEST BOUNDARY; THENCE SOUTHERLY ALONG THE

SAID WEST BOUNDARY TO THE POINT OF COMMENCEMENT
CONTAINING 1.21 3.00
C) PLAN 1722948 – ROAD 0.360 0.89

Attached hereto as **Exhibit "J"** is a copy of the Certificate of Title to the Havener Land.

14. On May 13 and May 15, 2020 respectively, J.R. Paine and RBEE registered liens pursuant to the *Builders Lien Act*, RSA 2000, c B-7, being instrument numbers 202 104 972 (J.R. Paine) and 202 106 447 (RBEE) on title to the Shankowski Land (the "**Shankowski Liens**"), which is legally described as:

FIRST
MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
A) PLAN 1722948 – ROAD 0.417 1.03
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK SAME

SECOND
MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER SOUTH WEST
CONTAINING 64.7 HECTARES (ACRES) MORE OR LESS
A) PLAN 1722948 – ROAD 0.417 1.03
EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

Attached hereto as **Exhibit "K"** is a copy of the Certificate of Title to the Shankowski Land.

14. RBEE also asserts a builder's lien claim against JMB's registered interest in the Havener Land, which interest is evidenced by a caveat registered as 002 170 374 on June 20, 2000 (the "**Additional RBEE Lien Claim**").

15. I swear this Affidavit in support of an Application to declare the Havener Liens, Shankowski Liens and the Additional RBEE Lien Claim invalid and to have the Havener Liens and Shankowski Liens discharged from the Havener Land.

SWORN (OR AFFIRMED) BEFORE ME at Calgary, Alberta this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
In and for the Province of Alberta.
My Commission expires Aug. 13, 2022

JASON PANTER

This is Exhibit "A" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
in and for the Province of Alberta.
My Commission expires Aug. 13, 2022

AGGREGATES ROYALTY AGREEMENT

This **EXCLUSIVE AGREEMENT** is made as of the ____19 th_____ day of

____August_____, AD 2016_____

BETWEEN **JMB CRUSHING SYSTEMS ULC**
(hereinafter referred to as "JMB")

And

Jerry Shankowski (945441 Alberta Ltd.)
(full names and/or complete company name)

7727 81 Avenue Edmonton, AB T6C 0V4
(full postal address)

(hereinafter referred to as "the Vendor")

WHEREAS the Vendor is the ____Registered Owner_____ of
(registered owner, purchaser, lessee or otherwise)

SW 21-56-7-W4

(legal land description)

(hereinafter referred to as "the Lands") shown outlined on the plan contained herein and said to contain _____ Hectares (___160_____ Acres) more or less,

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual terms and conditions hereinafter contained, JMB and the Vendor agree as follows:

ARTICLE 1 DEFINITIONS

In this Agreement:
1. "Aggregates" means, with respect to naturally occurring unprocessed material considered in bulk as mixtures of particles of different sizes, those materials commonly referred to as boulders, cobbles, gravel, sand and silt and all other granular materials of little or no plasticity such as are commonly used in the surfacing of roads and the construction of drainage works.

2. "Gravel" means that the type of Aggregate such that, on average, half or less by weight of the constituent particles will pass an opening 1.6mm (about one sixteenth of an inch) square.

3. "Sand" means that type of Aggregates such that, on average more than half by weight of the constituent particles will pass an opening 1.6mm (about one sixteenth of an inch) square.

4. "Machinery" means excavation equipment, crushers, screening equipment, mobile asphalt and soil-cement mixing plants, portable testing laboratories, weigh scales and storage tanks and shall include such other machinery, trucks, temporary structures and conveniences that JMB deems necessary for the prospecting, testing, getting, processing and hauling out of Aggregates, but shall exclude any structures whose primary purpose is residential in nature.

ARTICLE II ACCESS TO AGGREGATES

The Vendor agrees to exclude all other gravel marketing agents or agencies from the Lands, and agrees to allow JMB, his agents, servants and workmen full and free exclusive access at all times to and from the Lands, and agrees that JMB may, at his own expense:

1. Do all such acts as may be necessary for the purpose of effectual exploring, prospecting for, testing, getting, processing, and disposing of Aggregates contained in the Lands.

2. Take upon the Lands and use without hindrance such Machinery as JMB deems necessary, and

3. Place or pile upon the Lands without further charge any excavated or processed Aggregates, rejected or reclaimed material, topsoil or overburden necessary for the duration of this Agreement.

ARTICLE III WEED CONTROL

Overburden and waste material will be disposed of or piled in such a manner as to facilitate weed control wherever such disposal or piling is practicable.

ARTICLE IV ROYALTY RATES ESTABLISHED

1. JMB shall pay to the Vendor 3.50 dollars per **TONNE**

(4.34 dollars per **CUBIC YARD**) of accepted GRAVEL removed from the Lands.

2. JMB shall pay to the Vendor 1.00 dollars per **TONNE**

(1.24 dollars per **CUBIC YARD**) of accepted SAND removed from the Lands.

3. JMB shall pay the vendor 5.00 dollars per **TONNE**
(6.20 dollars per **CUBIC YARD** of pea gravel removed from the Lands.

Such payments are due ninety (90) days after the sand and gravel has been removed from the Lands. Such payments shall in all cases be compensation in full for Aggregates removed from the Lands.

ARTICLE V MEASUREMENT OF AGGREGATES

Aggregates will normally be measured by weight for the purpose of Royalty Payment unless, in JMB's opinion, to do so would be impractical, in which case measurements shall be by volumes determined by cross-section or truck-box methods. Where necessary, conversions from volume to weight, and vice versa, shall be made using a factor of 1.632 tonnes per cubic meter for gravel and a factor of 1.365 tonnes per

cubic meter for sand, or a factor of 1.24 tonnes per cubic yard for gravel and a factor of 0.836 tonnes per cubic yard of sand.

ARTICLE VI ITEMS NOT TO BE PAID FOR SEPARATELY

The Vendor agrees that there shall be NO COMPENSATION for:
1 Unaccepted materials stripped from the Lands or rejected during processing.

2. Materials such as silt, sand, gravel, oil, lime cement or other additives brought to the Lands by JMB.

3. The right of access to and from the Lands.

4. Any other damage or injuries that may be done to the Lands or improvements, if any, during the term of this agreement.

ARTICLE VII DEVELOPMENT AND RECLAMATION APPROVAL

1. JMB undertakes to make any necessary application for Development and Reclamation approval to Alberta Environment and local authorities insofar as JMB operations.

2. JMB shall carry out reclamation of the Lands as may be directed by the Minister of the Environment or his agents under such Acts and Regulations as may from time to time be in effect. Such reclamation shall be limited to that occasioned by land disturbances resulting from JMB's operations.

ARTICLE VIII ADDITIONAL CONDITIONS
(if none, write 'none').

- JMB is responsible for all county fees associated with gravel removal.
- JMB will remove a minimum of 100,000 tonnes per year upon approval of Code of Practice by Alberta Environment.
- JMB will deal with AEP to have the E Construction Code of Practice replaced with a JMB Code of Practice
- JMB will commit to rescreening 40,000 tonnes of coarse elimination sand that is currently stockpiled on the property to salvage the 20mm-10mm pea gravel from that product. JMB will pay Shankowski the royalty rate of $ 5.00/tonne for that pea gravel as it is sold.
- JMB will produce to a maximum of 20,000 tonnes per year for Shankowski at a rate of $3.50/tonne. Actual quantity will be mutually agreed upon prior to crushing.
- JMB agrees to renegotiate/review this Royalty Agreement midway through this contract on August 19, 2018

ARTICLE IX REMAINING STOCKPILES

Notwithstanding the expiry date described in Article X of this Agreement, the Vendor shall grant to JMB the right to leave material that has been produced in connection with this Agreement in stockpiles on the Lands for a period of two (2) years beyond the said expiry date without further charge, together with the right of access to such stockpiles for the purpose of removing them.

ARTICLE X TERM OF THIS AGREEMENT

The term of this Agreement shall be for a period commencing on the date hereof and ending at 24.00 hours

on the_____15th_____of_____Sept_____, AD __2020___, at which time this Agreement shall expire. JMB will have the first right to renegotiate the next agreement. In the event of sale of the lands during this term, this agreement shall continue to be in effect for the full term as indicated above.

THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO:

JMB CRUSHING SYSTEMS ULC

PER:

EXECUTED BY THE VENDORS:

PER:

PER

This is Exhibit "B" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
in and for the Province of Alberta.
My Commission expires Aug. 13, 2022

AGGREGATES ROYALTY AGREEMENT

This **EXCLUSIVE AGREEMENT** is made as of the 8 day of November, AD 2018

BETWEEN **JMB CRUSHING SYSTEMS ULC**
(hereinafter referred to as "JMB")

And

HELEN HAVENER
P.O. Box 598
ELK POINT, AB
T0A 1A0

&

GAIL HAVENER
P.O. Box 608
ELK POINT, AB
T0A 1A0

(hereinafter referred to as "the Vendor")

WHEREAS the Vendor is the REGISTERED OWNER of
(registered owner, purchaser, lessee or otherwise)

NW – 16 – 56 – 7 – W4M
(legal land description)

(hereinafter referred to as "the Lands") shown outlined on the plan contained herein and said to contain _____ Hectares (157 Acres) more or less,

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the mutual terms and conditions hereinafter contained, JMB and the Vendor agree as follows:

ARTICLE 1 DEFINITIONS

In this Agreement:

1. "Aggregates" means, with respect to naturally occurring unprocessed material considered in bulk as mixtures of particles of different sizes, those materials commonly referred to as boulders, cobbles, gravel, sand and silt and all other granular materials of little or no plasticity such as are commonly used in the surfacing of roads and the construction of drainage works.

2. "Gravel" means that the type of Aggregate such that, on average, half or less by weight of the constituent particles will pass an opening 1.6mm (about one sixteenth of an inch) square.

3. "Sand" means that type of Aggregates such that, on average more than half by weight of the constituent particles will pass an opening 1.6mm (about one sixteenth of an inch) square.

4. "Machinery" means excavation equipment, crushers, screening equipment, mobile asphalt and soil-cement mixing plants, portable testing laboratories, weigh scales and storage tanks and shall include such other machinery, trucks, temporary structures and conveniences that JMB deems necessary for the prospecting, testing, getting, processing and hauling out of Aggregates. but shall exclude any structures whose primary purpose is residential in nature.

ARTICLE II ACCESS TO AGGREGATES

The Vendor agrees to exclude all other gravel marketing agents or agencies from the Lands, and agrees to allow JMB, his agents, servants and workmen full and free exclusive access at all times to and from the Lands, and agrees that JMB may, at his own expense:

1. Do all such acts as may be necessary for the purpose of effectual exploring, prospecting for, testing, getting, processing, and disposing of Aggregates contained in the Lands.

2. Take upon the Lands and use without hindrance such Machinery as JMB deems necessary, and

3. Place or pile upon the Lands without further charge any excavated or processed Aggregates, rejected or reclaimed material, topsoil or overburden necessary for the duration of this Agreement.

ARTICLE III WEED CONTROL

Overburden and waste material will be disposed of or piled in such a manner as to facilitate weed control wherever such disposal or piling is practicable.

ARTICLE IV ROYALTY RATES ESTABLISHED

Refer to Schedule A, attached.

Notwithstanding the term of this agreement, the payment rates established for the various materials such as sand, gravel, and clay as set out in Schedule A shall be valid for a period of one (1) year. Each year, by December 31st, JMB and the Vendor shall renegotiate the payment rates to the Vendor for the upcoming construction season.

ARTICLE V MEASUREMENT OF AGGREGATES

Aggregates will normally be measured by weight for the purpose of Royalty Payment unless, in JMB's opinion, to do so would be impractical, in which case measurements shall be by volumes determined by cross-section or truck-box methods. Where necessary, conversions from volume to weight, and vice versa, shall be made using a factor of 1.632 tonnes per cubic meter for gravel and a factor of 1.365 tonnes per cubic meter for sand, or a factor of 1.24 tonnes per cubic yard for gravel and a factor of 0.836 tonnes per cubic yard of sand.

ARTICLE VI ITEMS NOT TO BE PAID FOR SEPARATELY

The Vendor agrees that there shall be NO COMPENSATION for:
1 Unaccepted materials stripped from the Lands or rejected during processing.

2. Materials such as silt, sand, gravel, oil, lime cement or other additives brought to the Lands by JMB.

3. The right of access to and from the Lands.

4. Any other damage or injuries that may be done to the Lands or improvements, if any, during the term of this agreement.

ARTICLE VII DEVELOPMENT AND RECLAMATION APPROVAL

1. JMB undertakes to make any necessary application for Development and Reclamation approval to Alberta Environment and local authorities insofar as JMB operations.

2. JMB shall carry out reclamation of the Lands as may be directed by the Minister of the Environment or his agents under such Acts and Regulations as may from time to time be in effect. Such reclamation shall be limited to that occasioned by land disturbances resulting from JMB's operations.

ARTICLE VIII ADDITIONAL CONDITIONS
(if none, write 'none').

- **JMB Crushing Systems will guarantee a minimum annual sale of 100,000 tonnes for a period of ten years.**
- **JMB shall be granted the right of first refusal to match any offer to purchase made on the property. In the event that an offer is made to the land owners, JMB shall have 90 days to match the offer.**
- **This agreement replaces the previous JMB/Havener agreement dated Sept 8, 2017and which expires Sept 8, ~~2012~~ 2021**
- **In the event this agreement survives the life span of either Helen Havener and/or Gail Havener, this agreement shall transfer to their estates.**
- **JMB will be utilize a caveat to secure this agreement and JMB's interests in the property**
- **JMB agrees to pay Helen Havener royalty payments to her numbered company 1569605 Alberta Ltd.**

ARTICLE IX REMAINING STOCKPILES

Notwithstanding the expiry date described in Article X of this Agreement, the Vendor shall grant to JMB the right to leave material that has been produced in connection with this Agreement in stockpiles on the Lands for a period of two (2) years beyond the said expiry date without further charge, together with the right of access to such stockpiles for the purpose of removing them.

ARTICLE X TERM OF THIS AGREEMENT

The term of this Agreement shall be for a period commencing on the date hereof and ending at 24.00 hours

on the 8 of November, AD 2031, at which time this Agreement shall expire. JMB will have the first right to renegotiate the next agreement. In the event of sale of the lands during this term, this agreement shall continue to be in effect for the full term as indicated above.

THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO:

JMB CRUSHING SYSTEMS ULC

PER:

EXECUTED BY THE VENDOR:

PER: Witness:

PER: Witness:

HAVENER PIT

SCHEDULE "A" PAYMENT RATES

1. JMB shall pay to the Vendor _**Four Dollars ($4.00)**__ **per METRIC TONNE** of accepted ASPHALT CONCRETE PAVEMENT or CONCRETE GRAVEL including Manufactured Fines and Concrete Rock and Pea Gravel removed from the Lands.

2. JMB shall pay to the Vendor __**Two Dollars Fifty Cents ($2.50)**__ **per METRIC TONNE** of accepted OILPATCH or ROAD GRAVEL including Des.4 Class 20, Des.4 Class 25, Des.4 Class 40 and Des.4 Class 50 removed from the Lands.

3. JMB shall pay to the Vendor _ **Two Dollars Fifty Cents ($2.50)** __ of accepted BASE GRAVELS including Des.2 Class 20, Des.2 Class 25, Des.2 Class 40 and Des.2 Class50 removed from the Lands.

4. JMB shall pay to the Vendor _ __ **One Dollar Zero Cents (1.00) per METRIC TONNE** of accepted SCREENINGS, SAND, removed from the Lands.

5. JMB shall pay the vendor **Fifty Cents (0.50) per Cubic Meter** for clay removed from the lands

6. After year 3 of this agreement which is May 1 , 2022, the yearly royalty rates stated above will increase **3% annually.**

7. All payments are due no later than 90 days after the monthly report is produced.

Such payments shall in all cases be compensation in full for Materials removed from the Lands.

Per: JMB

Per: Havener

Per: Havener

Date: Nov 8, 2018

This is Exhibit "C" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
In and for the Province of Alberta.
My Commission expires Aug. 13, 2022

TERMS AND CONDITIONS AGREEMENT

This Agreement is made effective the 1st day of November, 2013.

Between:

Municipal District of Bonnyville No. 87
(" hereinafter the "MD")

- and -

JMB Crushing Systems ULC
(hereinafter "JMB")

Definitions

1. In this Agreement, capitalized words will have the following meanings:

   a. "Agreement" means this Terms and Conditions Agreement;

   b. "MD" means the Municipal District of Bonnyville No. 87, a municipality under the provisions of the *Municipal Government Act*, R.S.A. 2000, c. M-26, as amended, with offices at or near the town of Bonnyville, Alberta;

   c. "JMB" means JMB Crushing Systems ULC, a corporation under the laws of Alberta with offices in the town of Bonnyville, Alberta;

   d. "Parties" means the Municipal District of Bonnyville No. 87 and JMB Crushing Systems ULC;

   e. "Product" means the production by JMB of the aggregate described in this Agreement which includes the crushing and cleaning of rock/gravel, and all related services whereby rock/gravel is made into usable crushed aggregate for the MD in accordance with the required specifications set out in this Agreement;

   f. "Services" means the hauling and stockpiling of crushed aggregate by JMB as set out in this Agreement and anything else which is required to be done to give effect to this Agreement;

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NB

g. "Term" means the period of time this Agreement is in effect; and

h. "Year" means a calendar year commencing on January 1 and ending on December 31 of the same year.

JMB Responsibilities

2. At all times, JMB will comply with all applicable laws.

3. At its own cost, JMB will provide all labour, materials, equipment, supplies and anything else required to produce the Product and provide the Services to the satisfaction of the MD.

4. All personnel of JMB who are directly or indirectly involved with producing the Product and providing the Services are under the direction and control of JMB.

5. JMB will exercise good workmanship and quality control regarding the Product and Services.

6. JMB will prioritize, schedule, plan and establish deadlines such that the Product and Services are provided to the MD in accordance with the terms of this Agreement.

7. JMB shall forthwith report to the MD any damage it causes to MD property.

8. At all times, JMB shall ensure it is meeting all legal requirements to carry on its business and provide the Product and Services to the MD.

9. JMB represents that it is a resident of Canada for the purposes of Canadian income tax legislation.

Prime Contractor

10. JMB will be the prime contractor in the specific areas and geographic locations where the Product and Services are provided, including the pit where the Product is made and for all areas related to providing the Services.

Product & Services

11. At its own cost, JMB is responsible for crushing rock/gravel at a pit to produce the Product which is in a usable aggregate form for the MD and which is in accordance with the following required specifications:

    a. Modified Designation 4 Class 20mm, Modified Designation 4 Class 40 mm in accordance with the following specifications in the table below:

DESIGNATION	4	
CLASS (MM)	20	40
40 000		100
PERCENT 25 000		
PASSING METRIC 20 000	100	55-
SIEVE 10 000	35-77	25-
(COSB 8-GP 8 000		
2M)*M 5 000	15-55	8-55
1 250	0-30	0-30
80	0-12	0-12
%FRACTURE BY ALL WEIGHT FACES +5000	40+	25+
PLASITICITY INDEX (PI)	NP-8	NP-8

b. Product specifications are as set out above, or otherwise agreed by the Parties in writing, and are generally described as crushed gravel being Modified Des 4 Class 20/Des 4 Class 40 with no more than 25% passing the 1250um.

c. A minimum of 200,000 (two-hundred-thousand) tonnes of Product per Year, shall be delivered and stockpiled at designated locations within the geographic boundaries of the MD, as determined by the MD acting reasonably.

d. The stockpile locations designated by the MD for the 2013 Year are the MD's yard at NE 19-61-5 W4m and at the Harco Oilfield Services Ltd. NW 14-62-2 W4M. JMB will have unlimited access to the Harco Oilfield Services Ltd. location. JMB will have reasonable access to the MD's yard.

e. Annual quantities, and locations where the Product will be hauled and stockpiled by JMB, shall be confirmed in writing by September 1st of each year. Unless the Parties agree otherwise in writing, the annual quantities shall not be less than 200,000 (two-hundred-thousand) tonnes of Product delivered and stockpiled for the MD by JMB.

f. JMB may make the Product, haul and stockpile to the MD designated locations for the given year as mutually agreed upon by both parties.

g. For delivery and stockpiling of the Product, JMB shall have reasonable access to locations designated by the MD.

Delivery and Stockpiling

12. JMB shall deliver the Product to the MD, and in cooperation with MD staff, stockpile the Product in a continuous cone to a minimum height of 10 (ten) meters. JMB shall supply all equipment and labour for delivering and stockpiling the Product, including trucks, a stacking conveyor(s), bulldozer(s) and any other equipment.

Changes to Product

13. Changes may be made to the Product amounts or specifications as agreed upon by the Parties. When such changes are agreed upon, the Parties shall prepare and execute an amendment to this Agreement.

Ownership of Product

14. JMB shall own the Product until the MD has paid all invoices for the crushing of the Product in a Year, or when all of the Product for the same Year has been delivered to the MD, whichever first occurs.

Term

15. The Term of this Agreement shall be ten (10) years, commencing on November 1, 2013.

Price

16. The price for the Product and Services provided in accordance with the provisions of this Agreement shall be as follows:

    a. For the first 5 years of this Agreement, the MD will pay JMB $25.00 (twenty-five dollars) per tonne; and

    b. The last 5 years of this Agreement, the MD will pay JMB $27.00 (twenty-seven dollars) per tonne.

17. Unless agreed to in writing by the Parties, the MD will not pay JMB any monies other than the amounts per tonne specified in this Agreement for the Product and Services, plus GST.

Invoicing & Set-Off

18. Invoices of JMB shall state the quantity of Product being invoiced, the period the invoice covers, the amount being invoiced, whether the invoice is for crushing or delivery/stockpiling of the Product, GST, and any other reasonable information required by the MD.

19. When crushing is being done in a Year, JMB shall invoice the MD on a bi-weekly basis for 50% (fifty percent) of the applicable price per tonne of the Product which has been crushed and which will subsequently be delivered to the MD in the same Year.

20. When the Product is delivered and stockpiled in a Year as per this Agreement, JMB shall invoice the MD bi-weekly, or other period agreed on in writing by the Parties, for the remaining 50% (fifty percent) of the applicable price per tonne for the Product which is scaled/weighed by JMB and delivered and stockpiled by JMB.

21. Within 30 days of receiving JMB invoices, the MD will pay undisputed amounts.

22. The MD may make adjustments for any overpayments to JMB at any time.

23. For each Year, all invoices for that Year are to be submitted by JMB to the MD by December 31 of that Year.

24. At all times, the MD reserves the right to verify the quantity and quality of Product which JMB invoices it. The MD is not required to pay for Product which does not meet the specifications and the permitted deviations from them in accordance with this Agreement.

25. JMB shall be responsible to remit all amounts required by provincial and federal laws to the appropriate governmental agency.

26. From the amounts paid to JMB by the MD, JMB is deemed to hold that part of them in trust which are required or needed to pay for any salaries, wages, compensation, overtime pay, statutory holiday pay, vacation pay, entitlements, employee and employer Canada Pension Plan contributions, employee and employer Employment Insurance contributions, Workers' Compensation premiums and assessments, income taxes, withholdings, GST and all costs directly or indirectly related to the Product and Services. JMB shall pay the foregoing from such trust funds.

27. The MD may set-off and deduct any monies payable to JMB against any financial obligation JMB owes the MD.

Other Fees

28. JMB reserves the right to negotiate with the MD for reasonable and necessary ancillary charges which are assessed by other municipalities or the provincial or federal governments. The MD must agree in writing to any such ancillary charges before they are paid by the MD.

GST

29. The Parties shall comply with the *Excise Tax Act* (Canada) pertaining to GST. JMB shall set out applicable GST as a separate item on all invoices and the MD shall pay such GST. JMB shall be responsible for remitting GST in accordance with the *Excise Tax Act*.

30. JMB and the MD shall have registered Goods & Services Tax ("GST") accounts.

Changes

31. The MD may at any time issue changes to the general scope of the Product and the Services in this Agreement. In such event, the MD and JMB shall agree to an equitable adjustment to the price. Any such agreed changes and adjustments shall be in writing.

Quality Control

32. JMB will ensure the quality of the Product meets the required specifications stated in this Agreement.

33. At JMB's cost, sieve samples shall be taken by a qualified independent geotechnical testing firm at a frequency of 1 (one) sieve per 1,000 (one-thousand) tonnes of Product produced and records shall be kept of such samples. Copies of the sample results will be provided to the MD by JMB within 72 (seventy-two) hours of them being taken.

34. JMB will ensure that the variances from the specifications for the Product do not deviate more than 2% (two percent) from the required specifications. If the variance from the Product specifications continues to deviate from the required specifications for more than 2 (two) consecutive sieves without satisfactory correction by JMB, until the required specifications are met, the MD reserves the right to reject the Product which does not meet the required specifications. Should such deviation occur the MD shall undertake to notify JMB is writing prior to any further action.

35. Test sampling of the Product shall be performed by JMB at the pit and records will be kept of the samples. Such test sampling will be done as frequently as required to ensure the required specifications for the Product is in accordance with the terms of this Agreement. Copies of the test sample results will be provided to the MD by JMB within 72 (seventy-two) hours of them being taken.

36. Spot testing of the Product will be performed by the MD when the Product is delivered to the designated locations specified by the MD and records of such testing will be kept by the MD. Copies of the spot testing results will be provided to JMB by the MD within 72 hours (seventy-two) hours of them being taken. JMB will ensure that the variances from the specifications for the delivered Product do not

deviate more than 2% (two percent) from the required specifications for the Product. If the variance from the Product specifications continues to deviate from the required specifications for more than 2 (two) consecutive sieves of delivered Product without satisfactory correction by JMB, the delivery of the Product will be suspended until an independent geotechnical consultant can verify that the specifications of the Product delivered is meeting the required specifications. JMB will pay the costs for such an independent assessment.

Insurance

37. At all times, JMB shall maintain Workers' Compensation insurance and shall pay its assessments and premiums as required by applicable Workers' Compensation legislation. JMB shall provide the MD with proof of Workers' Compensation coverage as required by the MD.

38. At all times, JMB shall have general liability insurance, with limits of not less than five-million dollars ($5,000,000) per occurrence for bodily injury, death, property damage, loss of use and consequential losses. At the MD's request, JMB shall furnish certificates of insurance as proof of coverage.

Indemnification & Liability

39. JMB shall indemnify and hold harmless the MD, its directors, trustees, officers, councillors, agents and employees, against and from any actions, claims, demands, proceedings, loss, liability, damages on account of injury to or death of persons, damage to or destruction of property belonging to the MD or others, which are directly or indirectly caused by JMB's acts, breach of contract or negligence related to the Product and Services.

40. Nothing in this Agreement shall obligate JMB to indemnify the MD for any loss, liability or damages caused by breach of contract or negligence by the MD, its directors, trustees, officers, councillors, agents or employees.

41. JMB indemnifies the MD for all amounts related to the Product and Services, or related to its personnel, including interest and penalties, which it is required to pay or remit to any governmental agency as required by law, including the Workers' Compensation Board.

Non-Agent

42. The Parties agree that none of the provisions of this Agreement shall be construed so as to constitute JMB as being the agent, partner or servant of the MD. JMB shall have no authority to make any statements, representations or commitments of any kind, or take any action, which may be binding upon the MD, except as may be authorized in writing by the MD.

Termination & Suspension

43. This Agreement automatically terminates without notice and without penalty when the Term expires.

44. Without notice to JMB and without penalty to the MD, this Agreement automatically terminates when JMB goes into receivership, becomes insolvent or is assigned or petitioned into bankruptcy.

45. By notifying JMB in writing, the MD may terminate this Agreement forthwith for a material breach of the terms of this Agreement and without further obligation on the MD beyond the date of such termination.

46. By notifying the MD in writing, JMB may terminate this Agreement forthwith for a material breach of the terms of this Agreement and without further obligation on JMB beyond the date of such termination.

47. At any time, the MD and JMB may mutually agree in writing to terminate this Agreement regardless of the foregoing termination provisions.

48. Upon written notice, the MD may suspend the operation of this Agreement, without penalty, when JMB is not complying with the terms of this Agreement and such suspension shall continue until JMB complies with the terms of this Agreement or the MD terminates this Agreement for a material breach of its terms.

49. Upon written notice, JMB may suspend the operation of this Agreement, without penalty, when the MD is not complying with the terms of this Agreement and such suspension shall continue until the MD complies with the terms of this Agreement or JMB terminates this Agreement for a material breach of its terms.

Mediation & Arbitration

50. Without prejudice to any other right or remedy the Parties may have, in the event of a dispute, the Parties shall make best efforts to resolve the dispute and use mediation before arbitration. When the parties cannot agree on a mediator, the Court of Queen's Bench of Alberta, upon application, shall appoint a mediator.

51. The Parties agree that any disputes arising from the performance of this Agreement, which cannot be settled in negotiation or mediation between the Parties, shall be submitted to a single arbitrator subject to the rules and procedures of the Alberta *Arbitration Act*, which shall be binding and subject to the limitations expressed in this Agreement. Each party shall bear its own costs for arbitration. The Parties shall equally share the costs of the arbitrator. Unless the Parties agree otherwise in writing, the place of the arbitration shall be Edmonton, Alberta. An arbitrator must be qualified to perform the arbitration by having the knowledge, experience, ability and

expertise to perform the arbitration relative to the nature of the dispute between the Parties.

52. When the Parties cannot agree in writing on an arbitrator, the Court of Queen's Bench, upon application, shall appoint an arbitrator.

Notices & Correspondence

53. Any notice required or permitted to be given hereunder shall be in writing, may be delivered personally or by facsimile, email, courier or registered mail, and shall be addressed to the representative of each Party at the address below, until changed by notification in writing to the other Party:

a. To JMB at:

Attention: Jeff Buck
JMB Crushing Systems ULC
P.O. Box 6977
Junction Secondary HWY #660 & Range Road 445
Bonnyville, AB T9N 2H4
Fax: 780-826-6280
Email: admin@jmbcrush.com

b. To the MD:

Attention: Darcy Zelisko
Municipal District of Bonnyville No. 87
Bag 1010
61330 RR 455
Bonnyville, AB T9N 2J7
Fax: 780-826-5064
Email: dzelisko@md.bonnyville.ab.ca

General

54. All references to dollars and "$" in this Agreement are to Canadian Dollars.

55. Time shall be of the essence in this Agreement.

56. In this Agreement, unless otherwise stated, all references to the masculine or feminine gender shall include the other and vice-versa.

57. This Agreement shall be construed and enforced in accordance with the laws applicable in the province of Alberta. The Parties hereto irrevocably attorn to the jurisdiction of the courts and arbitration in Alberta.

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MB

58. This Agreement contains the entire agreement and understanding between the MD and JMB and supersedes all prior representations and discussions pertaining to all matters directly or indirectly covered in this Agreement. There are no conditions, warranties, representations, understandings or agreements of any nature other than as set out in this Agreement.

59. This Agreement may only be amended by a subsequent written instrument signed by both Parties.

60. Failure of the Parties to insist upon or to enforce strict performance of any of the terms of this Agreement shall not be construed as a waiver of their rights to assert or rely upon such terms subsequently.

61. Should any part of this Agreement be held invalid or illegal, that part shall be severed from the Agreement and the remainder shall continue in full force and effect.

62. This Agreement shall not be assigned, except as may be agreed upon by the Parties in writing.

63. Neither Party shall be responsible for any delay or failure to perform its obligations under this Agreement where such delay or failure is due to natural disasters, fire, flood, explosion, acts of terrorism, war, embargo, labour strikes, Acts of God, or any other cause beyond their control. Within seven (7) days from the beginning of such events, the affected Party shall notify the other Party in writing of the existence of the event and its probable impact on its obligations in this Agreement.

64. This Agreement may be executed and delivered by the Parties in counterparts (each of which shall be considered an original) and by facsimile, email or other electronic means, and when a counterpart has been executed and delivered by each of the Parties, all such counterparts shall together constituted one agreement.

IN WITNESS THEREOF the authorized representatives of the Parties have executed this Agreement as of the date first written above.

JMB CRUSHING SYSTEMS ULC
Per:

Jeff Buck, President

MUNICIPAL DISTRICT OF BONNYVILLE No. 87
Per:

AMENDMENT TO AGREEMENT

This is an amendment to the terms and conditions of the agreement signed on the 30th day of September, 2015.

BETWEEN:

Municipal District of Bonnyville No. 87
("hereinafter the "MD")

- And –

JMB Crushing Systems ULC
(Hereinafter "JMB")

WHEREAS the parties wish to amend certain terms of the agreement and WHEREAS both parties have reviewed and agreed upon the following terms and references being amended as follows:

Clause 11 c.

- A minimum of 200,000 (two-hundred-thousand) tonnes of Product per year, shall be supplied and/or stockpiled at designated locations within the geographic boundaries of the MD, mutually agreed upon by both parties. Should the Product be stockpiled in one of the designated pits both quantities and quality of Product shall be monitored and any shortfall shall be supplied in the same year as hauled. The MD will weight Product based on Loadrite scale and provide such records to JMB for confirmation if required.

Clause 11 d.

- ~~The stockpile locations designated by the MD for the 2013 Year are the MD's yard at NE 19-61-5 W4M and at the Harco Oilfeild Services Ltd. NW 14-62-2 W4M. JMB will have unlimited access e Harco Oilfield Services Ltd location. JMB will have reasonable access to the MD's yard.~~

- The stockpile locations designated by the MD for 2015 as agreed upon by both parties will be Pit #19 - with gravel remaining in the Pit until the MD uses the gravel. For 2016 ONLY the designated stockpile locations shall be Pit #19, the Truman pit or the MD yard or as mutually agreed upon.

05.14-677
MB

Clause 11 e.

- Annual quantities, and locations where the Product will be hauled and stockpiled by JMB, shall be confirmed in writing by September 1st of each year except for 2016 ONLY confirmation of quantities and location will be January 1st. With 50% of payment at time of crushing and the remainder September 1st of 2016 providing it is stockpiled in one of the designated pits for $21.00/tonne. Every year thereafter moving forward notification will be September 1st unless the Parties agree otherwise. The annual quantities shall not be less than 200,000 (two-hundred-thousand) tonnes of Product delivered and stockpiled for the MD by JMB.

Clause 16.

- The price for the Product and Services provided in accordance with the provisions of this Agreement shall be as follows:
    a. For the remaining 2 years and moving forward , the MD will pay JMB:
        a. For 2016 - Product is in either of the following pits, namely Pit #19 or Truman Pit $21.00 (twenty-one dollars) per tonne or in MD yard $25.00 (twenty-five dollars) per tonne;
    b. The last five years of this Agreement, the MD will pay JMB $27.00 (twenty-seven dollars) per tonne.

Except as set forth in this Agreement, the Agreement is unaffected and shall continue in full force and effect in accordance with the terms. If there is a conflict between this Amendment and Agreement or any earlier Agreement, the terms of this Amendment will prevail.

JMB CRSHING SYSTEMS ULC
Per:

Jeff Buck, President

MUNICIPAL DISTRICT OF BONNVYILLE NO. 87
Per:

CAO, Chris Cambridge

AMENDMENT TO AGREEMENT

This is an amendment to the terms and conditions of the agreement signed on the 12th day of December, 2016.

BETWEEN:

Municipal District of Bonnyville No. 87
("hereinafter the "MD")

- And –

JMB Crushing Systems ULC
(Hereinafter "JMB")

WHEREAS the parties wish to amend certain terms of the agreement and WHEREAS both parties have reviewed and agreed upon the following terms and references being amended as follows:

The MD to receive a $1 (one dollar) reduction per tonne on the Product with the following conditions:

- Crush and stockpile 200,000 (two hundred thousand) tonnes of Product at an earlier mutually agreed upon time – starting as soon as December of the prior year and enforceable for the remainder of the term of the Agreement;
- Invoices payable within 90 days of receipt for Product – invoices to be dated within calendar year of Product delivery;
- Failure to notify the MD for Quality Control may result in the Product being refused.

Except as set forth in this Agreement, the Agreement is unaffected and shall continue in full force and effect in accordance with the terms. If there is a conflict between this Amendment and Agreement or any earlier Agreement, the terms of this Amendment will prevail.

JMB CRUSHING SYSTEMS ULC
Per:

Jeff Buck, President

MUNICIPAL DISTRICT OF BONNVYILLE NO. 87
Per:

CAO, Chris Cambridge

05.14-679
AB

AMENDMENT TO AGREEMENT

This is an amendment to the terms and conditions of the agreement signed on the 26th day of February 2018.

BETWEEN:

Municipal District of Bonnyville No. 87
("hereinafter the "MD")

- And –

JMB Crushing Systems ULC
(Hereinafter "JMB")

WHEREAS the parties wish to amend certain terms of the agreement and WHEREAS both parties have reviewed and agreed upon the following terms and references being amended as follows:

The MD to receive a $.50 (fifty cent) reduction per tonne on Product haul for 2018 gravel supply with the following conditions:

- As per request from JMB for full payment of 2018 interim crush by the end of February 2018
- And as per council motion:
  Resolution No. 18.152
  That Council agrees to an early payment on February 28, 2018 to JMB Crushing Systems ULC for the 2018 gravel crushing contract, subject to the Municipal District receiving a reduction of $.50 per tonne on the fall gravel haul portion of the 2018 gravel supply contract with JMB Crushing.

Background:

- As per original agreement dated 1st November 2013 and in particular Clause 16
  a) For the first 5 years of this Agreement, the MD will pay JMB $25.00 (twenty-five dollars) per tonne; and
  b) The last five years of this Agreement, the MD will pay JMB $27.00 (twenty-seven dollars per tonne.

- Amending agreement dated 30th September 2015 and in particular Clause 16
  a) For the remaining two(2) years and moving forward, the MD will pay JMB:
  For 2016 product is in either of the following pits, namely pit #19 or Truman Pit $21.00 (twenty-one dollars) per tonne or in the MD yard $25.00 (twenty-five dollars) per tonne
  b) The last five (5) years of this Agreement, the MD will pay JMB $27.00 (twenty-seven dollars) per tonne.

05.14-680

- Amending agreement dated 12th of December 2016 and in particular Clause 16:
    - The MD will receive a $1.00 (one dollar) reduction per tonne on the Product with the following conditions:
        - Crush and stockpile 200,000 (two hundred thousand) tonnes of Product at an earlier mutually agreed upon time – starting as soon as December of the prior year and enforceable for the remainder of the term of this Agreement.
        - Invoices payable within 90 days of receipt for Product – invoices to be dated within calendar year of Product delivery.
        - Failure to notify the MD for Quality Control may result in the Product being refused.

Keeping in mind that as per Amending Agreement dated 16th December 2016 and this amending agreement the MD will be receiving a $1.50 (one dollar and fifty cent) reduction for the 2018 crush and supply contract.

Except as set forth in this Agreement, the Agreement is unaffected and shall continue in full force and effect in accordance with the terms. If there is a conflict between this Amendment and Agreement or any earlier Agreement, the terms of this Amendment will prevail.

JMB CRSHING SYSTEMS ULC
Per:

Jeff Buck, President

MUNICIPAL DISTRICT OF BONNVYILLE NO. 87
Per:

CAO, Chris Cambridge

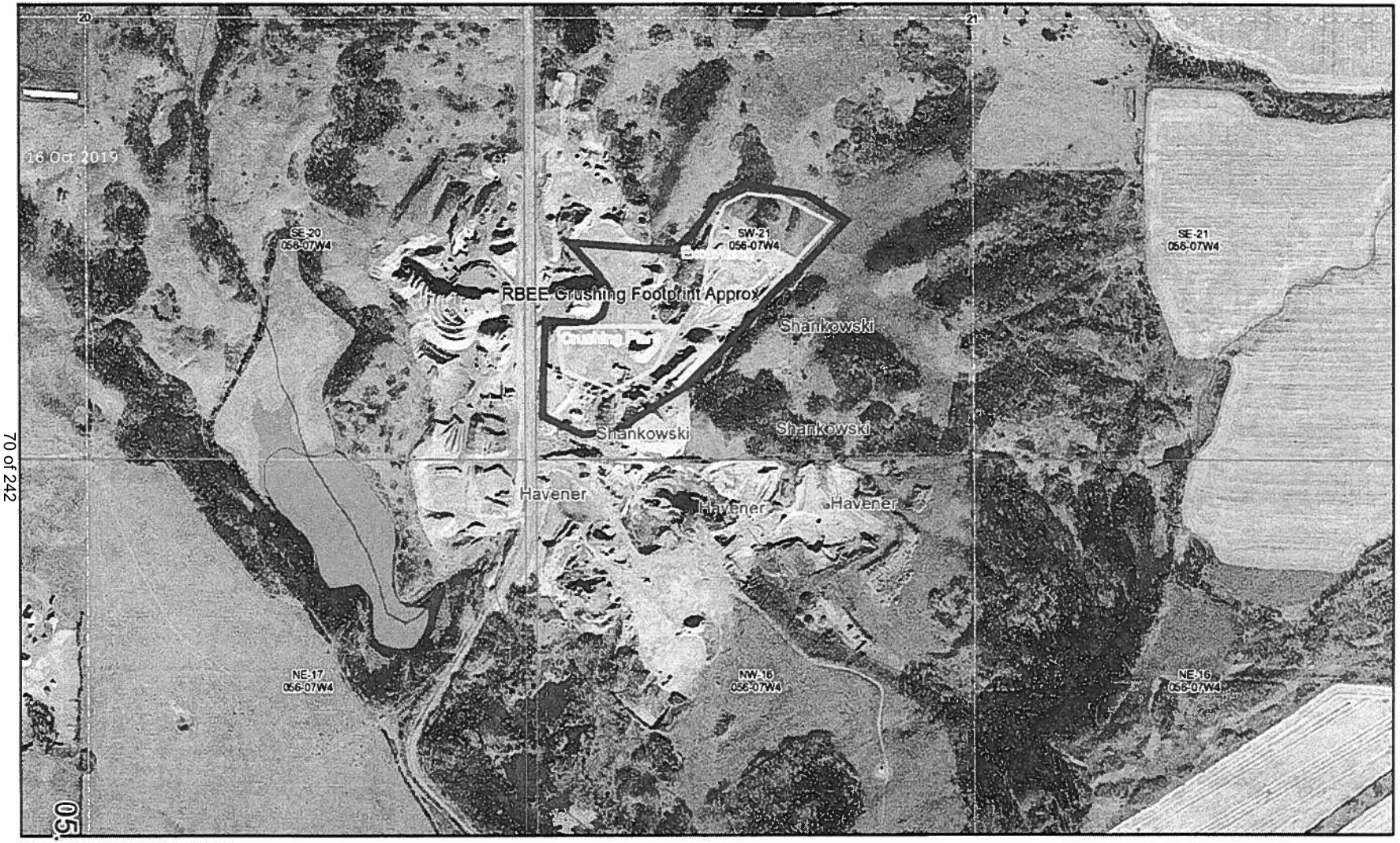
This is Exhibit "D" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
In and for the Province of Alberta.
My Commission expires Aug. 13, 2022

RBEE Contract Shankowski



Tuesday, October 6, 2020

AbaData

05.14-683

05.14-683

This is Exhibit "E" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
in and for the Province of Alberta.
My Commission expires Aug. 13, 20[illegible]

RBEE Aggregate Consulting Ltd.

Box 1110
Gibbons, AB T0A 1N0

INVOICE

Invoice No.: 270
Date: Apr 16, 2020
Ship Date:
Page: 1
Re: Order No. RBJ951

Sold to:

JMB Crushing Systems Ltd.
PO Box 6977
Bonnyville, AB T9N 2H4

Ship to:

JMB Crushing Systems Ltd.
PO Box 6977
Bonnyville, AB T9N 2H4

Business No.: 788842680RT0001

Item No.	Unit	Quantity	Description	Tax	Base Price	Disc %	Unit Price	Amount
			RBJ 951 - Elk Point					
	Lumpsum	1	Stripping	G	7,500.00		7,500.00	7,500.00
	Tonne	42,448	12.5 MM	G	11.00		11.00	466,928.00
			Subtotal:					474,428.00
			G - GST 5%					
			GST/HST					23,721.40

Shipped By:	Tracking Number:	Total Amount	498,149.40
Comment:		Amount Paid	0.00
Sold By:		Amount Due	498,149.40

05.14-685

NB

This is Exhibit "F" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
in and for the Province of Alberta.
My Commission expires Aug. 13, 2022

PURCHASE ORDER

950160
THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES, ETC.

TO J.R. PAINE & ASSOCIATES Ltd.
ADDRESS 17505-106 Ave
SHIP TO Edmonton, AB T5S 1E7
ADDRESS (393 NW of Barrhaven)

REQ. NO. OR DEPT.
DATE April/20
FOR

PLEASE NOTIFY US IMMEDIATELY IF YOU ARE UNABLE TO SHIP COMPLETE ORDER BY DATE SPECIFIED

QUANTITY	PLEASE SUPPLY ITEMS LISTED BELOW	PRICE	AMOUNT
1	Please use this PO# for all		
2	J.R. Paine's invoices for this project		
3			
4	Only pay invoices if approved		
5	by Jason Panter.		
6			
7	Inv # IN016150, IN016151		
8			
9			
10			

DATE REQUIRED
VIA
PLEASE SEND COPY(IES) OF YOUR INVOICE
TERMS
Jason Panter
PURCHASING AGENT

This is Exhibit "G" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
In and for the Province of Alberta.
My Commission expires Aug. 13, 20[illegible]

J.R. Paine & Associates Ltd.
17505 - 106 Avenue NW
Edmonton, AB T5S 1E7
Canada

Invoice

Number:	IN016291
Page:	1
Date:	2/29/20
Account Code	JMBCRU

Sold To: JMB CRUSHING SYSTEMS INC.
PO BOX 6977
BONNYVILLE, AB T9N 2H4

P.O. No.	Internal Ref:	Terms Code
		N30

	Description/Comments	Unit Price	Amount
	ATTENTION: JASON PANTER		
	FILE NO: 5200-1 ELK POINT CRUSHER CONTROL FEBRUARY 2020		
1.00	MOB TO SITE - LAB TRAILER	1,200.00	1,200.00
5.00	DAILY RATE - DAY SHIFT - FEB 25-29	750.00	3,750.00
5.00	DAILY RATE - NIGHT SHIFT, - FEB 25-29	750.00	3,750.00

Subtotal before taxes	8,700.00
Total taxes	435.00
Total amount	9,135.00
Invoice Amount	9,135.00

Remit To:
J.R. Paine & Associates Ltd.
17505 - 106 Avenue NW
Edmonton, AB T5S 1E7
Phone: 780-489-0700

G.S.T. # R102730207

Interest of 1.5% per month will be charged on all overdue accounts
Please include a copy of your invoice with your payment

05.14-689

NB

J.R. Paine & Associates Ltd.
17505 - 108 Avenue NW
Edmonton, AB T5S 1E7
Canada

Invoice

Number:	IN016450
Page:	1
Date:	3/31/20
Account Code	JMBCRU

Sold To: JMB CRUSHING SYSTEMS INC.
PO BOX 6977
BONNYVILLE, AB T9N 2H4

P.O. No.	Internal Ref:	Terms Code
		N30

	Description/Comments	Unit Price	Amount
	ATTENTION: JASON PANTER		
	FILE NO: 5200-1 MD OF BONNYVILLE 2-16mm AGGREGATEC		
24.00	DAY SHIFT TESTING MAR 1-12, 17-20, 22-29	750.00	18,000.00
22.00	NIGHT SHIFT TESTING MAR 1-6, 8-10, 12, 17-28	750.00	16,500.00
3.00	STANDBY - MARCH 7 NS, 11 NS, 21 DS	500.00	1,500.00
2.00	HRS. TECH. TRIP TO EDMONTON - RETURN MARCH 13-16 DAYS OFF	625.00	1,250.00

Subtotal before taxes	37,250.00
Total taxes	1,862.50
Total amount	39,112.50
Invoice Amount	39,112.50

Remit To:
J.R. Paine & Associates Ltd.
17505 - 106 Avenue NW
Edmonton, AB T5S 1E7
Phone: 780-489-0700

G.S.T. # R102730207

Interest of 1.5% per month will be charged on all overdue accounts
Please include a copy of your invoice with your payment

05.14-690

NB

J.R. Paine & Associates Ltd.
17505 - 106 Avenue NW
Edmonton, AB T5S 1E7
Canada

Invoice

Number:	IN016451
Page:	1
Date:	3/31/20
Account Code	JMBCRU

Sold To: JMB CRUSHING SYSTEMS INC.
PO BOX 6977
BONNYVILLE, AB T9N 2H4

P.O. No.	Internal Ref:	Terms Code
		N30

	Description/Comments	Unit Price	Amount
	ATTENTION: JASON PANTER		
	FILE NO: 5200-1		
	MD OF BONNYVILLE		
	1-12.5mm AGGREGATE		
1.00	DAY SHIFT TESTING - MARCH 31	750.00	750.00
2.00	NIGHT SHIFT TESTING - MARCH 30-31	750.00	1,500.00
1.00	STANDBY - MARCH 30 DS	500.00	500.00

Subtotal before taxes	2,750.00
Total taxes	137.50
Total amount	2,887.50
Invoice Amount	2,887.50

Remit To:
J.R. Paine & Associates Ltd.
17505 - 106 Avenue NW
Edmonton, AB T5S 1E7
Phone: 780-489-0700

G.S.T. # R102730207

Interest of 1.5% per month will be charged on all overdue accounts
Please include a copy of your invoice with your payment

05.14-691

NB

J.R. Paine & Associates Ltd.
17505 - 106 Avenue NW
Edmonton, AB T5S 1E7
Canada

Invoice

Number:	IN016458
Page:	1
Date:	4/30/20
Account Code	JMBCRU

Sold To: JMB CRUSHING SYSTEMS INC.
PO BOX 6977
BONNYVILLE, AB T9N 2H4

P.O. No.	Internal Ref:	Terms Code
		N30

	Description/Comments	Unit Price	Amount
	ATTENTION: JASON PANTER		
	FILE NO: 5200-1		
	MD OF BONNYVILLE		
	1-12.5mm AGGREGATE		
8.00	DAY SHIFT TESTING - APRIL 1-8	750.00	6,000.00
7.00	NIGHT SHIFT TESTING APRIL 1-7	750.00	5,250.00
1.00	TRAILER MOB/DEMOB.	1,200.00	1,200.00

Subtotal before taxes	12,450.00
Total taxes	622.50
Total amount	13,072.50
Invoice Amount	13,072.50

Remit To:
J.R. Paine & Associates Ltd.
17505 - 106 Avenue NW
Edmonton, AB T5S 1E7
Phone: 780-489-0700

G.S.T. # R102730207

Interest of 1.5% per month will be charged on all overdue accounts
Please include a copy of your invoice with your payment

05.14-692

NB

This is Exhibit "H" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
in and for the Province of Alberta.
My Commission expires Aug. 13, 2022

JMB CRUSHING SYSTEMS

P.O. Box 6977, Bonnyville, AB T9N 2H4
www.jmbcrush.com
admin@jmbcrush.com

Quantum
"THE GRAVEL EXPERTS"

Gail Havener
Box 608
Elk Point AB
T0A 1A0

RE: Statement of Account

Please find attached your statement of materials removed from your pit and payable to you for the period ending:

February 1-29, 2020

Material:	Quantity:	Rate:	Value:
Sub-total:	*0.00*		$ -
5% GST			$ -

Total Payable $ -

	Value	*GST*	*Total*
50% Payable to 1569605 Alberta Ltd:	0.00	0.00	$ -
50% Payable to Gail Havener:	0.00	0.00	$ -
	0.00	0.00	$ -

1569605 Alberta Ltd (Helen) GST#838325009RT0001
Gail Havener GST #829686955RT0001

P.O. Box 6977, Bonnyville, AB T9N 2H4
www.jmbcrush.com

"THE GRAVEL EXPERTS"

Gail Havener
Box 608
Elk Point AB
T0A 1A0

RE: Statement of Account

Please find attached your statement of materials removed from your pit and payable to you for the period ending:

March 1-31, 2020

Material:	Quantity:	Rate:	Value:
Sub-total:	*0.00*		$ -
5% GST			$ -

Total Payable - - $ -

	Value	*GST*	*Total*
50% Payable to 1569605 Alberta Ltd:	0.00	0.00	$ -
50% Payable to Gail Havener:	0.00	0.00	$ -
	0.00	0.00	$ -

1569605 Alberta Ltd (Helen) GST#838325009RT0001
Gail Havener GST #829686955RT0001

P.O. Box 6977, Bonnyville, AB T9N 2H4
www.jmbcrush.com

"THE GRAVEL EXPERTS"

Gail Havener
Box 608
Elk Point AB
T0A 1A0

RE: Statement of Account

Please find attached your statement of materials removed from your pit and payable to you for the period ending:

April 1-30, 2020

Material:	Quantity:	Rate:	Value:
Sub-total:	*0.00*		$ -
5% GST			$ -

Total Payable - - $ -

	Value	*GST*		*Total*
50% Payable to Estate of Helen Havener:	0.00	0.00	$	-
50% Payable to Gail Havener:	0.00	0.00	$	-
	0.00	0.00	$	-

1569605 Alberta Ltd (Helen) GST#838325009RT0001
Gail Havener GST #829686955RT0001

JMB CRUSHING SYSTEMS

P.O. Box 6977, Bonnyville, AB T9N 2H4
www.jmbcrush.com
admin@jmbcrush.com

Quantum
"THE GRAVEL EXPERTS"

1569605 Alberta Ltd
Box 598
Elk Point AB
T0A 1A0

RE: Statement of Account

Please find attached your statement of materials removed from your pit and payable to you for the period ending:

February 1-29, 2020

Material:	Quantity:	Rate:	Value:
Sub-total:	*0.00*		$ -
5% GST			$ -

Total Payable $ -

	Value	*GST*	*Total*
50% Payable to 1569605 Alberta Ltd:	0.00	0.00	$ -
50% Payable to Gail Havener:	0.00	0.00	$ -
	0.00	0.00	$ -

1569605 Alberta Ltd (Helen) GST#838325009RT0001
Gail Havener GST #829686955RT0001

P.O. Box 6977, Bonnyville, AB T9N 2H4
www.jmbcrush.com

"THE GRAVEL EXPERTS"

1569605 Alberta Ltd
Box 598
Elk Point AB
T0A 1A0

RE: Statement of Account

Please find attached your statement of materials removed from your pit and payable to you for the period ending:

March 1-31, 2020

Material:	Quantity:	Rate:	Value:
Sub-total:	*0.00*		$ -
5% GST			$ -

Total Payable - - $ -

	Value	*GST*	*Total*
50% Payable to 1569605 Alberta Ltd:	0.00	0.00	$ -
50% Payable to Gail Havener:	0.00	0.00	$ -
	0.00	0.00	$ -

1569605 Alberta Ltd (Helen) GST#838325009RT0001
Gail Havener GST #829686955RT0001

05.14-698

NB

P.O. Box 6977, Bonnyville, AB T9N 2H4
www.jmbcrush.com

"THE GRAVEL EXPERTS"

Estate of Helen Havener
Box 598
Elk Point AB
T0A 1A0

RE: Statement of Account

Please find attached your statement of materials removed from your pit and payable to you for the period ending:

April 1-30, 2020

Material:	Quantity:	Rate:	Value:
Sub-total:	*0.00*		$ -
5% GST			$ -

Total Payable - - $ -

	Value	*GST*	*Total*
50% Payable to Estate of Helen Havener:	0.00	0.00	$ -
50% Payable to Gail Havener:	0.00	0.00	$ -
	0.00	0.00	$ -

1569605 Alberta Ltd (Helen) GST#838325009RT0001
Gail Havener GST #829686955RT0001

This is Exhibit "I" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
In and for the Province of Alberta.
My Commission expires Aug. 13, 2022

JMB Crushing Systems Inc.

Aggregate Size: Des 1 Class 12.5

Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/04/04	184868	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	154.54	10855
2020/04/04	186461	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	154.53	10855
2020/04/04	186508	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	154.20	10855
2020/04/04	186819	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	70.69	10855
2020/04/04	186853	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	27.75	10855
2020/04/04	186854	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	85.65	10855
2020/04/04	186883	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	140.13	10855
2020/04/04	186936	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	154.87	10855
2020/04/04	187097	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	114.15	10855
2020/04/04	187123	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	115.99	10855
2020/04/04	187141	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	113.60	10855
2020/04/04	187663	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	155.46	10855
2020/04/04	187697	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	155.38	10855
2020/04/04	188086	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	159.55	10855
2020/04/04	190564	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	115.44	10855
2020/04/04	190628	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	157.83	10855
2020/04/04	190719	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	115.22	10855
2020/04/04	190925	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	142.50	10855
2020/04/14	186342	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	237.77	10855
2020/04/14	186454	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	194.32	10855
2020/04/14	186484	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	233.71	10855
2020/04/14	186517	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	196.85	10855
2020/04/14	186593	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	171.84	10855
2020/04/14	186937	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	237.02	10855
2020/04/14	187070	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	112.88	10855
2020/04/14	187101	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	234.95	10855
2020/04/14	187115	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	174.37	10855
2020/04/14	187151	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.20	10855
2020/04/14	188083	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	240.64	10855
2020/04/14	190304	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	196.52	10855
2020/04/14	190338	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	232.59	10855
2020/04/14	190415	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.63	10855
2020/04/14	190556	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	171.80	10855
2020/04/14	190633	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	198.59	10855
2020/04/14	190724	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	144.40	10855
2020/04/14	190840	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	168.95	10855
2020/04/14	190929	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	218.43	10855
2020/04/14	191032	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	171.62	10855
2020/04/15	186341	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	235.54	10855
2020/04/15	186465	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	233.19	10855
2020/04/15	186511	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	196.11	10855
2020/04/15	186594	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.44	10855
2020/04/15	186940	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	236.01	10855
2020/04/15	187102	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	235.28	10855
2020/04/15	187116	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	115.13	10855
2020/04/15	187152	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.18	10855
2020/04/15	187172	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	193.73	10855
2020/04/15	188082	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	239.66	10855
2020/04/15	190319	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.98	10855
2020/04/15	190336	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	232.46	10855
2020/04/15	190416	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.77	10855
2020/04/15	190555	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	142.95	10855
2020/04/15	190634	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	237.98	10855
2020/04/15	190841	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	168.07	10855
2020/04/15	190932	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	181.51	10855
2020/04/15	191031	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	171.64	10855
2020/04/16	186343	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	196.44	10855
2020/04/16	186463	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	192.18	10855
2020/04/16	186512	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	197.33	10855
2020/04/16	186595	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	141.62	10855
2020/04/16	187069	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	107.81	10855
2020/04/16	187103	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	235.33	10855
2020/04/16	187137	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	143.13	10855
2020/04/16	187155	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	141.40	10855
2020/04/16	187173	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	192.09	10855

Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/04/16	187320	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	28.35	10855
2020/04/16	187691	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	190.61	10855
2020/04/16	188081	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	241.31	10855
2020/04/16	190335	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	230.39	10855
2020/04/16	190426	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.86	10855
2020/04/16	190479	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	235.15	10855
2020/04/16	190553	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.02	10855
2020/04/16	190635	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	237.73	10855
2020/04/16	190725	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	144.62	10855
2020/04/16	190842	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	166.37	10855
2020/04/16	190933	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	181.04	10855
2020/04/16	191030	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.08	10855
2020/04/17	171269	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	178.16	10864.01
2020/04/17	186344	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	235.63	10864.01
2020/04/17	186466	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	232.68	10864.01
2020/04/17	186513	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	198.60	10864.01
2020/04/17	187079	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	168.71	10864.01
2020/04/17	187104	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	235.14	10864.01
2020/04/17	187119	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	173.03	10864.01
2020/04/17	187156	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.94	10864.01
2020/04/17	187174	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	193.01	10864.01
2020/04/17	187191	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.28	10864.01
2020/04/17	187209	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	198.77	10864.01
2020/04/17	188080	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	200.47	10864.01
2020/04/17	190313	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.48	10864.01
2020/04/17	190334	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	195.14	10864.01
2020/04/17	190414	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.39	10864.01
2020/04/17	190480	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	156.38	10864.01
2020/04/17	190552	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.08	10864.01
2020/04/17	190726	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	87.31	10864.01
2020/04/17	190934	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	221.48	10864.01
2020/04/17	191029	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	171.90	10864.01
2020/04/18	171270	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	218.28	10864.01
2020/04/18	186345	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	238.97	10864.01
2020/04/18	186467	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.90	10864.01
2020/04/18	186514	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	159.99	10864.01
2020/04/18	187078	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.15	10864.01
2020/04/18	187105	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	234.68	10864.01
2020/04/18	187118	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	144.43	10864.01
2020/04/18	187157	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	168.62	10864.01
2020/04/18	187192	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.85	10864.01
2020/04/18	187210	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	39.94	10864.01
2020/04/18	187231	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.13	10864.01
2020/04/18	187690	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	192.53	10864.01
2020/04/18	188079	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	240.88	10864.01
2020/04/18	190412	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.54	10864.01
2020/04/18	190481	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	235.65	10864.01
2020/04/18	190551	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.94	10864.01
2020/04/18	190935	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	183.31	10864.01
2020/04/18	191028	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	171.01	10864.01
2020/04/19	186260	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	141.33	10864.01
2020/04/19	186346	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	236.54	10864.01
2020/04/19	186455	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	191.56	10864.01
2020/04/19	186468	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.40	10864.01
2020/04/19	186524	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	143.40	10864.01
2020/04/19	186813	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	178.34	10864.01
2020/04/19	186894	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	167.79	10864.01
2020/04/19	187106	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	235.32	10864.01
2020/04/19	187117	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.25	10864.01
2020/04/19	187193	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.33	10864.01
2020/04/19	187213	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	239.49	10864.01
2020/04/19	187247	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.21	10864.01
2020/04/19	187689	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	228.90	10864.01
2020/04/19	188078	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	199.30	10864.01
2020/04/19	188152	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	195.66	10864.01
2020/04/19	190428	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.28	10864.01
2020/04/19	190549	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	141.35	10864.01
2020/04/19	190936	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	184.35	10864.01

Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/04/19	191027	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.17	10864.01
2020/04/20	186257	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.71	10864.01
2020/04/20	186347	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	237.12	10864.01
2020/04/20	186469	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.84	10864.01
2020/04/20	186980	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	143.68	10864.01
2020/04/20	187107	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	233.94	10864.01
2020/04/20	187136	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.16	10864.01
2020/04/20	187160	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.26	10864.01
2020/04/20	187175	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	192.32	10864.01
2020/04/20	187194	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.54	10864.01
2020/04/20	187214	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	197.87	10864.01
2020/04/20	187245	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.06	10864.01
2020/04/20	188077	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	238.35	10864.01
2020/04/20	188153	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	197.69	10864.01
2020/04/20	190314	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	38.06	10864.01
2020/04/20	190548	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.88	10864.01
2020/04/20	190655	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	168.70	10864.01
2020/04/20	190937	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	218.32	10864.01
2020/04/20	191026	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.65	10864.01
2020/04/21	186348	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	197.85	10864.01
2020/04/21	186470	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.05	10864.01
2020/04/21	186490	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	28.27	10864.01
2020/04/21	186518	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	197.70	10864.01
2020/04/21	186880	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	169.69	10864.01
2020/04/21	186896	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	168.34	10864.01
2020/04/21	187077	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.94	10864.01
2020/04/21	187108	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.55	10864.01
2020/04/21	187135	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	143.54	10864.01
2020/04/21	187162	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.61	10864.01
2020/04/21	187176	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	191.56	10864.01
2020/04/21	187215	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	199.19	10864.01
2020/04/21	187244	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.15	10864.01
2020/04/21	187686	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.92	10864.01
2020/04/21	188076	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	240.04	10864.01
2020/04/21	188154	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	146.88	10864.01
2020/04/21	190727	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	116.78	10864.01
2020/04/21	190765	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	171.22	10864.01
2020/04/21	190938	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	182.88	10864.01
2020/04/22	186258	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.83	10864.01
2020/04/22	186349	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	237.27	10864.01
2020/04/22	186471	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.78	10864.01
2020/04/22	186515	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	198.61	10864.01
2020/04/22	186516	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	168.58	10864.01
2020/04/22	186863	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	196.53	10864.01
2020/04/22	187109	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	233.95	10864.01
2020/04/22	187134	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	144.13	10864.01
2020/04/22	187163	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	171.87	10864.01
2020/04/22	187177	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	192.17	10864.01
2020/04/22	187216	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	199.07	10864.01
2020/04/22	187243	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	230.69	10864.01
2020/04/22	187687	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	192.83	10864.01
2020/04/22	188075	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	199.14	10864.01
2020/04/22	190574	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	141.46	10864.01
2020/04/22	190772	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	173.45	10864.01
2020/04/22	190939	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	183.24	10864.01
2020/04/23	186350	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	239.60	10864.01
2020/04/23	186473	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	232.04	10864.01
2020/04/23	186493	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	141.06	10864.01
2020/04/23	186497	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	200.10	10864.01
2020/04/23	186852	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	173.96	10864.01
2020/04/23	186864	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	197.45	10864.01
2020/04/23	187110	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	234.12	10864.01
2020/04/23	187132	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	144.73	10864.01
2020/04/23	187164	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	143.58	10864.01
2020/04/23	187178	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	191.96	10864.01
2020/04/23	187195	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.07	10864.01
2020/04/23	187217	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	198.79	10864.01
2020/04/23	187240	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.14	10864.01

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Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/04/23	190547	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	140.52	10864.01
2020/04/23	190728	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	117.24	10864.01
2020/04/23	190940	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	183.66	10864.01
2020/04/23	191024	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	173.16	10864.01
2020/04/24	166969	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	175.40	10864.01
2020/04/24	186351	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	238.14	10864.01
2020/04/24	186472	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	116.04	10864.01
2020/04/24	186498	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	240.51	10864.01
2020/04/24	186865	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	196.99	10864.01
2020/04/24	187111	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	234.85	10864.01
2020/04/24	187128	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	144.51	10864.01
2020/04/24	187165	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	173.35	10864.01
2020/04/24	187179	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	192.61	10864.01
2020/04/24	187196	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	142.47	10864.01
2020/04/24	187236	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	193.18	10864.01
2020/04/24	190546	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	141.25	10864.01
2020/04/24	190729	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	88.38	10864.01
2020/04/24	190941	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	184.83	10864.01
2020/04/24	191023	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	114.23	10864.01
2020/04/25	186352	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	158.44	10864.01
2020/04/25	186499	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	240.61	10864.01
2020/04/25	186860	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	175.09	10864.01
2020/04/25	186866	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	196.55	10864.01
2020/04/25	187112	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	234.55	10864.01
2020/04/25	187131	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	143.30	10864.01
2020/04/25	187208	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.67	10864.01
2020/04/25	187235	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	232.42	10864.01
2020/04/25	187246	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.76	10864.01
2020/04/25	188074	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	240.46	10864.01
2020/04/25	190320	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	231.76	10864.01
2020/04/25	190930	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	147.38	10864.01
2020/04/25	191022	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.58	10864.01
2020/04/26	186353	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	238.03	10864.01
2020/04/26	186500	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	200.92	10864.01
2020/04/26	186628	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	194.60	10864.01
2020/04/26	186720	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	142.18	10864.01
2020/04/26	186910	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	171.84	10864.01
2020/04/26	187130	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.07	10864.01
2020/04/26	187180	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	192.63	10864.01
2020/04/26	187197	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.67	10864.01
2020/04/26	187218	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	200.28	10864.01
2020/04/26	187233	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	38.55	10864.01
2020/04/26	187249	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.14	10864.01
2020/04/26	188073	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	199.31	10864.01
2020/04/26	188178	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	144.36	10864.01
2020/04/26	190321	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	232.16	10864.01
2020/04/26	190931	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	197.99	10864.01
2020/04/26	191021	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	115.28	10864.01
2020/04/27	167043	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	192.86	10864.01
2020/04/27	184315	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	167.09	10864.01
2020/04/27	186520	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	80.13	10864.01
2020/04/27	186629	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	233.98	10864.01
2020/04/27	186711	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	237.19	10864.01
2020/04/27	187129	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	142.19	10864.01
2020/04/27	187198	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	170.82	10864.01
2020/04/27	187219	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	240.01	10864.01
2020/04/27	187250	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	173.32	10864.01
2020/04/27	188072	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	239.10	10864.01
2020/04/27	190322	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	193.12	10864.01
2020/04/27	190539	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	172.14	10864.01
2020/04/27	190730	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	146.42	10864.01
2020/04/27	190942	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	221.15	10864.01
2020/04/28	170375	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	82.95	10864.01
2020/04/28	186354	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	119.98	10864.01
2020/04/28	186501	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	116.00	10864.01
2020/04/28	186630	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	77.89	10864.01
2020/04/28	186669	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	115.78	10864.01
2020/04/28	186712	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	118.08	10864.01

Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/04/28	186834	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	86.48	10864.01
2020/04/28	187068	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	86.07	10864.01
2020/04/28	187220	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	40.49	10864.01
2020/04/28	188071	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	119.33	10864.01
2020/04/28	190575	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	85.21	10864.01
2020/04/28	190731	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	87.00	10864.01
2020/04/28	190766	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 1 Class 12.5	82.03	10864.01
						48,997.62	
						48,997.62	

Aggregate Size: Des 2 Class 16

2020/03/19	186324	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.33	10841
2020/03/19	186756	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	245.86	10841
2020/03/19	186772	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.97	10841
2020/03/19	186822	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	190.76	10841
2020/03/19	186825	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.68	10841
2020/03/19	186904	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	111.08	10841
2020/03/19	186918	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	113.01	10841
2020/03/19	186924	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.61	10841
2020/03/19	187470	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	79.83	10841
2020/03/19	187610	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	190.67	10841
2020/03/19	187649	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.32	10841
2020/03/19	187821	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.07	10841
2020/03/19	187894	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	177.95	10841
2020/03/19	188130	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	191.80	10841
2020/03/19	188197	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	190.29	10841
2020/03/19	188241	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	155.92	10841
2020/03/19	188242	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.58	10841
2020/03/19	190302	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	190.39	10841
2020/03/19	190645	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.89	10841
2020/03/19	190712	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.86	10841
2020/03/19	191005	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.42	10841
2020/03/20	181838	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.98	10841
2020/03/20	186267	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	185.50	10841
2020/03/20	186325	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.01	10841
2020/03/20	186368	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	227.32	10841
2020/03/20	186375	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	76.72	10841
2020/03/20	186773	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.10	10841
2020/03/20	186823	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	189.49	10841
2020/03/20	186826	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	138.88	10841
2020/03/20	186905	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	160.86	10841
2020/03/20	186919	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	109.42	10841
2020/03/20	187549	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.50	10841
2020/03/20	187781	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	210.09	10841
2020/03/20	187822	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	229.00	10841
2020/03/20	187841	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	153.23	10841
2020/03/20	187865	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	157.04	10841
2020/03/20	187866	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	35.23	10841
2020/03/20	190268	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	185.63	10841
2020/03/20	190305	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	182.81	10841
2020/03/20	190357	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	183.68	10841
2020/03/20	190573	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.14	10841
2020/03/20	190615	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.25	10841
2020/03/20	190711	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	166.77	10841
2020/03/20	190915	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	188.41	10841
2020/03/21	186269	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	107.44	10841
2020/03/21	186369	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	226.30	10841
2020/03/21	186757	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	81.56	10841
2020/03/21	186774	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	158.56	10841
2020/03/21	186824	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	191.28	10841
2020/03/21	186827	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.24	10841
2020/03/21	186903	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.55	10841
2020/03/21	186922	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.94	10841

Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/03/21	186923	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.13	10841
2020/03/21	187650	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.67	10841
2020/03/21	187782	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	105.86	10841
2020/03/21	187823	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	116.64	10841
2020/03/21	187838	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	40.86	10841
2020/03/21	187850	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	159.74	10841
2020/03/21	187852	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	117.28	10841
2020/03/21	187867	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	114.56	10841
2020/03/21	187878	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	120.40	10841
2020/03/21	190272	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	227.84	10841
2020/03/21	190356	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	190.61	10841
2020/03/21	190558	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.86	10841
2020/03/21	190616	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.66	10841
2020/03/21	190710	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.61	10841
2020/03/21	190713	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.84	10841
2020/03/21	190914	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	153.08	10841
2020/03/22	179754	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.22	10841
2020/03/22	186371	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.21	10841
2020/03/22	186816	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	154.42	10841
2020/03/22	186828	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.93	10841
2020/03/22	186873	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.47	10841
2020/03/22	186892	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.49	10841
2020/03/22	186901	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.40	10841
2020/03/22	186920	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	166.64	10841
2020/03/22	187469	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.86	10841
2020/03/22	187651	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	79.35	10841
2020/03/22	187652	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	117.54	10841
2020/03/22	190316	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.18	10841
2020/03/22	190355	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.42	10841
2020/03/22	190571	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.81	10841
2020/03/22	190709	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	200.39	10841
2020/03/22	190714	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	174.01	10841
2020/03/22	190832	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	162.99	10841
2020/03/23	186372	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.83	10841
2020/03/23	186817	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	75.85	10841
2020/03/23	186848	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.03	10841
2020/03/23	186874	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.00	10841
2020/03/23	186886	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.68	10841
2020/03/23	186893	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	57.45	10841
2020/03/23	186899	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	56.78	10841
2020/03/23	186921	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	165.64	10841
2020/03/23	187468	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.10	10841
2020/03/23	187702	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.54	10841
2020/03/23	190310	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	229.98	10841
2020/03/23	190354	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.90	10841
2020/03/23	190572	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.14	10841
2020/03/23	190617	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.34	10841
2020/03/23	190715	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.43	10841
2020/03/23	190833	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	162.69	10841
2020/03/23	191037	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.78	10841
2020/03/24	163737	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.58	10841
2020/03/24	186268	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	164.36	10841
2020/03/24	186443	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	228.25	10841
2020/03/24	186818	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	35.21	10841
2020/03/24	186829	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	113.28	10841
2020/03/24	186875	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.26	10841
2020/03/24	186925	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.73	10841
2020/03/24	186926	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.45	10841
2020/03/24	187466	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	28.88	10841
2020/03/24	187467	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	117.97	10841
2020/03/24	187653	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.81	10841
2020/03/24	190274	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.64	10841
2020/03/24	190312	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.32	10841
2020/03/24	190352	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.00	10841
2020/03/24	190570	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.30	10841
2020/03/24	190618	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	117.69	10841
2020/03/24	190619	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	78.04	10841
2020/03/24	190834	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.75	10841

05.14-706

JMB Crushing Systems Inc.

Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/03/24	190916	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	117.17	10841
2020/03/24	191036	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.64	10841
2020/03/25	183734	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	111.61	10841
2020/03/25	184262	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.76	10841
2020/03/25	186444	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	190.60	10841
2020/03/25	186810	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	27.91	10841
2020/03/25	186830	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.90	10841
2020/03/25	186887	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	186.50	10841
2020/03/25	186927	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.55	10841
2020/03/25	187465	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.42	10841
2020/03/25	187609	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	162.38	10841
2020/03/25	187654	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.55	10841
2020/03/25	187693	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.19	10841
2020/03/25	187849	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.09	10841
2020/03/25	190275	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.88	10841
2020/03/25	190348	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.43	10841
2020/03/25	190568	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.20	10841
2020/03/25	190620	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.96	10841
2020/03/25	190917	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.38	10841
2020/03/25	191035	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.86	10841
2020/03/26	186266	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	165.06	10841
2020/03/26	186378	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.96	10841
2020/03/26	186445	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	228.89	10841
2020/03/26	186487	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	154.66	10841
2020/03/26	186492	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	177.15	10841
2020/03/26	186831	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.77	10841
2020/03/26	186885.1	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.96	10841
2020/03/26	186895	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	27.12	10841
2020/03/26	186898	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	55.48	10841
2020/03/26	186928	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.04	10841
2020/03/26	186973	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.16	10841
2020/03/26	187464	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.00	10841
2020/03/26	187655	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.58	10841
2020/03/26	190317	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.37	10841
2020/03/26	190353	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.39	10841
2020/03/26	190566	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.30	10841
2020/03/26	190621	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.59	10841
2020/03/26	190918	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.38	10841
2020/03/27	186379	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.59	10841
2020/03/27	186446	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	229.92	10841
2020/03/27	186456	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.86	10841
2020/03/27	186502	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.41	10841
2020/03/27	186811	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	35.19	10841
2020/03/27	186832	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.34	10841
2020/03/27	186884	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.89	10841
2020/03/27	186897	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.37	10841
2020/03/27	186906	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.28	10841
2020/03/27	186929	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.75	10841
2020/03/27	186974	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.94	10841
2020/03/27	187463	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	239.96	10841
2020/03/27	187607	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	163.81	10841
2020/03/27	187656	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.75	10841
2020/03/27	187692	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.28	10841
2020/03/27	190350	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.61	10841
2020/03/27	190567	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.61	10841
2020/03/27	190622	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.06	10841
2020/03/27	190922	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	39.46	10841
2020/03/28	186381	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.59	10841
2020/03/28	186486	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.76	10841
2020/03/28	186503	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.20	10841
2020/03/28	186833	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.13	10841
2020/03/28	186881	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.96	10841
2020/03/28	186930	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.96	10841
2020/03/28	186975	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.26	10841
2020/03/28	187076	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.53	10841
2020/03/28	187462	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.55	10841
2020/03/28	187605	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	137.44	10841
2020/03/28	187657	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.11	10841

05.14.707

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Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/03/28	190318	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.19	10841
2020/03/28	190349	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.50	10841
2020/03/28	190550	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.13	10841
2020/03/28	190623	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	277.57	10841
2020/03/29	186380	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.42	10841
2020/03/29	186450	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.45	10841
2020/03/29	186457	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.34	10841
2020/03/29	186504	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.69	10841
2020/03/29	186876	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.53	10841
2020/03/29	186931	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.29	10841
2020/03/29	186976	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.04	10841
2020/03/29	187075	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.20	10841
2020/03/29	187461	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	239.53	10841
2020/03/29	187606	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.29	10841
2020/03/29	187658	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.61	10841
2020/03/29	190347	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.60	10841
2020/03/29	190418	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.34	10841
2020/03/29	190562	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.83	10841
2020/03/29	190624	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.03	10841
2020/03/29	191034	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.07	10841
2020/03/30	186459	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	37.96	10841
2020/03/30	186932	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	38.86	10841
2020/03/30	186977	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	28.32	10841
2020/03/30	187449	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	39.18	10841
2020/04/01	163736	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	113.90	10846
2020/04/01	186448	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	150.93	10846
2020/04/01	186485	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.26	10846
2020/04/01	186505	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	190.44	10846
2020/04/01	186882	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.10	10846
2020/04/01	186902	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	113.74	10846
2020/04/01	186912	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	136.67	10846
2020/04/01	186933	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.98	10846
2020/04/01	187094	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.39	10846
2020/04/01	187660	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.84	10846
2020/04/01	187696	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.06	10846
2020/04/01	190346	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.38	10846
2020/04/01	190417	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	113.96	10846
2020/04/01	190625	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	158.82	10846
2020/04/01	190716	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.99	10846
2020/04/01	190919	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	154.44	10846
2020/04/01	191033	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	55.43	10846
2020/04/02	186449	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.35	10846
2020/04/02	186458	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.47	10846
2020/04/02	186506	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.10	10846
2020/04/02	186850	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.58	10846
2020/04/02	186877	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.88	10846
2020/04/02	186900	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	173.43	10846
2020/04/02	186934	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.44	10846
2020/04/02	187095	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.58	10846
2020/04/02	187113	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.78	10846
2020/04/02	187448	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	241.60	10846
2020/04/02	187661	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.55	10846
2020/04/02	190299	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.55	10846
2020/04/02	190345	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.21	10846
2020/04/02	190569	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	175.01	10846
2020/04/02	190626	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	200.12	10846
2020/04/02	190717	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	146.02	10846
2020/04/02	190921	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	158.33	10846
2020/04/02	190923	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	108.88	10846
2020/04/03	174379	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	28.81	10854
2020/04/03	186451	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.79	10854
2020/04/03	186460	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.69	10854
2020/04/03	186507	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.14	10854
2020/04/03	186851	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.47	10854
2020/04/03	186878	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.63	10854
2020/04/03	186935	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.17	10854
2020/04/03	187096	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.20	10854
2020/04/03	187114	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	86.88	10854

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Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/04/03	187142	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	85.03	10854
2020/04/03	187447	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	241.93	10854
2020/04/03	187662	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.88	10854
2020/04/03	187695	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	38.52	10854
2020/04/03	190341	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	155.97	10854
2020/04/03	190343	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	38.44	10854
2020/04/03	190565	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	175.53	10854
2020/04/03	190627	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.94	10854
2020/04/03	190718	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	145.10	10854
2020/04/03	190920	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.43	10854
2020/04/03	190924	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	183.19	10854
2020/04/28	170376	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	55.11	10863.01
2020/04/28	186293	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	85.16	10863.01
2020/04/28	186355	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	78.81	10863.01
2020/04/28	186631	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	77.29	10863.01
2020/04/28	186670	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	56.48	10863.01
2020/04/28	186710	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	77.91	10863.01
2020/04/28	186835	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	85.61	10863.01
2020/04/28	187067	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	85.73	10863.01
2020/04/28	187223	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	78.55	10863.01
2020/04/28	187242	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	38.15	10863.01
2020/04/28	188070	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	118.92	10863.01
2020/04/28	190732	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	57.62	10863.01
2020/04/28	190771	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	82.51	10863.01
2020/04/29	170288	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	136.07	10863.01
2020/04/29	170377	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.83	10863.01
2020/04/29	186276	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	155.67	10863.01
2020/04/29	186294	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.17	10863.01
2020/04/29	186632	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.65	10863.01
2020/04/29	186671	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.10	10863.01
2020/04/29	186713	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.04	10863.01
2020/04/29	186814	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	177.50	10863.01
2020/04/29	186836	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	85.16	10863.01
2020/04/29	187066	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	112.34	10863.01
2020/04/29	187084	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	166.86	10863.01
2020/04/29	187224	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	80.10	10863.01
2020/04/29	187238	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	227.13	10863.01
2020/04/29	187685	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.18	10863.01
2020/04/29	188069	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.69	10863.01
2020/04/29	190835	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.39	10863.01
2020/04/30	170378	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.97	10863.01
2020/04/30	181433	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	28.73	10863.01
2020/04/30	181434	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	86.90	10863.01
2020/04/30	186277	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	240.21	10863.01
2020/04/30	186295	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.32	10863.01
2020/04/30	186633	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.23	10863.01
2020/04/30	186672	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.78	10863.01
2020/04/30	186714	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.36	10863.01
2020/04/30	186812	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.93	10863.01
2020/04/30	186815	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	182.20	10863.01
2020/04/30	186911	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	163.92	10863.01
2020/04/30	187065	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.72	10863.01
2020/04/30	187241	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.79	10863.01
2020/04/30	188068	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	201.41	10863.01
2020/04/30	190324	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	191.69	10863.01
2020/04/30	190836	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	84.96	10863.01
2020/05/01	170379	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	138.19	10869
2020/05/01	186279	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.96	10869
2020/05/01	186297	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.58	10869
2020/05/01	186634	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.17	10869
2020/05/01	186673	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.49	10869
2020/05/01	186715	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.63	10869
2020/05/01	186737	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	173.49	10869
2020/05/01	186857	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	163.25	10869
2020/05/01	187237	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.36	10869
2020/05/01	190323	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	191.01	10869
2020/05/01	190656	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.66	10869
2020/05/01	191020	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.88	10869

Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/05/02	170380	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	173.13	10869
2020/05/02	170752	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	23.34	10869
2020/05/02	186278	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.64	10869
2020/05/02	186296	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.88	10869
2020/05/02	186674	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.84	10869
2020/05/02	186858	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.50	10869
2020/05/02	186978	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.78	10869
2020/05/02	187092	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	173.27	10869
2020/05/02	187239	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	155.60	10869
2020/05/02	187684	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.13	10869
2020/05/02	190658	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.15	10869
2020/05/02	191019	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.71	10869
2020/05/03	170381	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.92	10869
2020/05/03	186280	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	157.51	10869
2020/05/03	186675	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.85	10869
2020/05/03	186739	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.45	10869
2020/05/03	186744	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	12.06	10869
2020/05/03	186907	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	164.76	10869
2020/05/03	186981	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.24	10869
2020/05/03	187093	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.80	10869
2020/05/03	187497	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.88	10869
2020/05/03	190308	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	191.25	10869
2020/05/03	190659	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.11	10869
2020/05/03	191018	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.59	10869
2020/05/04	186259	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	166.84	10869
2020/05/04	186281	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.67	10869
2020/05/04	186331	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	84.00	10869
2020/05/04	186494	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.64	10869
2020/05/04	186721	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.46	10869
2020/05/04	186982	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.53	10869
2020/05/04	187064	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	56.92	10869
2020/05/04	187683	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.36	10869
2020/05/04	190660	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.33	10869
2020/05/04	191017	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	72.62	10869
2020/05/05	167044	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	155.55	10869
2020/05/05	170262	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.64	10869
2020/05/05	170304	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	157.91	10869
2020/05/05	186261	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.32	10869
2020/05/05	186282	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.36	10869
2020/05/05	186474	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	76.70	10869
2020/05/05	186495	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	83.39	10869
2020/05/05	186635	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.18	10869
2020/05/05	186888	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	154.13	10869
2020/05/05	187005	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.71	10869
2020/05/05	187127	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.50	10869
2020/05/05	187232	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	115.86	10869
2020/05/05	187906	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.87	10869
2020/05/05	188067	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.83	10869
2020/05/05	190657	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.10	10869
2020/05/05	190943	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	108.73	10869
2020/05/06	170251	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.83	10869
2020/05/06	170305	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.97	10869
2020/05/06	170310	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.69	10869
2020/05/06	170382	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.09	10869
2020/05/06	186262	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.46	10869
2020/05/06	186636	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.08	10869
2020/05/06	186889	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.03	10869
2020/05/06	187006	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	173.96	10869
2020/05/06	187126	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.62	10869
2020/05/06	187181	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.39	10869
2020/05/06	187905	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.41	10869
2020/05/06	190944	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	184.53	10869
2020/05/06	191016	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.37	10869
2020/05/07	170252	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.35	10869
2020/05/07	170306	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.36	10869
2020/05/07	170342	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.37	10869
2020/05/07	170383	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.38	10869
2020/05/07	186263	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.86	10869

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Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/05/07	186637	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.08	10869
2020/05/07	186890	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.33	10869
2020/05/07	186971	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.55	10869
2020/05/07	187124	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.41	10869
2020/05/07	187182	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.14	10869
2020/05/07	187229	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	157.50	10869
2020/05/07	188066	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	200.74	10869
2020/05/07	190303	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.59	10869
2020/05/07	190945	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	179.14	10869
2020/05/07	191015	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.86	10869
2020/05/08	170253	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.21	10869
2020/05/08	170301	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.92	10869
2020/05/08	170341	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.02	10869
2020/05/08	170384	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.92	10869
2020/05/08	186264	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	149.54	10869
2020/05/08	186638	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.97	10869
2020/05/08	187125	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.42	10869
2020/05/08	187186	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.83	10869
2020/05/08	187230	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	200.05	10869
2020/05/08	187873	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.51	10869
2020/05/08	188065	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	239.57	10869
2020/05/08	188564	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.90	10869
2020/05/08	190946	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	219.51	10869
2020/05/08	191014	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.78	10869
2020/05/09	170254	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.44	10869
2020/05/09	170263	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.99	10869
2020/05/09	170340	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.65	10869
2020/05/09	170343	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.60	10869
2020/05/09	186283	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	154.64	10869
2020/05/09	186496	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.10	10869
2020/05/09	186639	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.36	10869
2020/05/09	186891	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	119.75	10869
2020/05/09	188064	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.07	10869
2020/05/09	188563	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	191.01	10869
2020/05/09	190947	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	219.16	10869
2020/05/09	191013	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.89	10869
2020/05/10	170255	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	85.68	10869
2020/05/10	170264	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	239.88	10869
2020/05/10	170339	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.67	10869
2020/05/10	170362	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.41	10869
2020/05/10	182030	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.38	10869
2020/05/10	186540	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.22	10869
2020/05/10	187023	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.28	10869
2020/05/10	187062	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.47	10869
2020/05/10	187183	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.39	10869
2020/05/10	187880	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	154.50	10869
2020/05/10	188063	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	239.61	10869
2020/05/10	190948	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	223.89	10869
2020/05/10	191012	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.58	10869
2020/05/11	170256	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.48	10869
2020/05/11	170265	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.50	10869
2020/05/11	170338	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.81	10869
2020/05/11	170344	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	38.67	10869
2020/05/11	182037	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.22	10869
2020/05/11	186641	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.57	10869
2020/05/11	187061	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.79	10869
2020/05/11	187184	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	190.61	10869
2020/05/11	187876	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.07	10869
2020/05/11	187975	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	190.81	10869
2020/05/11	188062	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	240.45	10869
2020/05/11	190949	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	181.74	10869
2020/05/11	191011	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.00	10869
2020/05/12	170257	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.46	10869
2020/05/12	170266	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	200.08	10869
2020/05/12	170307	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.34	10869
2020/05/12	186476	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.69	10869
2020/05/12	186642	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.59	10869
2020/05/12	186676	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.33	10869

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Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/05/12	186908	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	229.82	10869
2020/05/12	186983	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.43	10869
2020/05/12	187091	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.06	10869
2020/05/12	187187	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.56	10869
2020/05/12	188061	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.90	10869
2020/05/12	190333	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.83	10869
2020/05/12	190950	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	217.58	10869
2020/05/12	191010	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.44	10869
2020/05/13	186475	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	37.89	10869
2020/05/13	186677	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	27.93	10869
2020/05/13	187188	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	37.56	10869
2020/05/13	187234	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	39.00	10869
2020/05/25	170259	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.52	10874
2020/05/25	170267	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.13	10874
2020/05/25	170309	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.90	10874
2020/05/25	170335	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.00	10874
2020/05/25	170361	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.31	10874
2020/05/25	170365	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	36.17	10874
2020/05/25	170366	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	155.86	10874
2020/05/25	181435	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.88	10874
2020/05/25	186284	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.40	10874
2020/05/25	186477	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.45	10874
2020/05/25	186644	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.41	10874
2020/05/25	186682	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.72	10874
2020/05/25	186722	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.37	10874
2020/05/25	186984	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.88	10874
2020/05/25	188059	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	119.06	10874
2020/05/25	190332	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.08	10874
2020/05/25	190508	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.61	10874
2020/05/26	170260	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.70	10874
2020/05/26	170268	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.00	10874
2020/05/26	170289	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.25	10874
2020/05/26	170297	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.79	10874
2020/05/26	170334	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.41	10874
2020/05/26	170360	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.82	10874
2020/05/26	170367	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.03	10874
2020/05/26	181436	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	165.10	10874
2020/05/26	186285	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.54	10874
2020/05/26	186478	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.97	10874
2020/05/26	186645	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	39.21	10874
2020/05/26	186678	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	57.12	10874
2020/05/26	186913	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	153.48	10874
2020/05/26	187727	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.46	10874
2020/05/26	190331	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.11	10874
2020/05/26	191009	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.12	10874
2020/05/27	170261	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.05	10874
2020/05/27	170269	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.82	10874
2020/05/27	170295	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	154.44	10874
2020/05/27	170298	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.33	10874
2020/05/27	170333	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.57	10874
2020/05/27	170358	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.93	10874
2020/05/27	170368	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.06	10874
2020/05/27	186286	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.52	10874
2020/05/27	186646	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	116.47	10874
2020/05/27	186679	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.83	10874
2020/05/27	186914	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.68	10874
2020/05/27	187089	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.27	10874
2020/05/27	187861	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.79	10874
2020/05/27	190330	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.72	10874
2020/05/27	190509	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.34	10874
2020/05/27	190540	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.23	10874
2020/05/28	170270	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	160.92	10874
2020/05/28	170299	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.61	10874
2020/05/28	170330	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.17	10874
2020/05/28	170359	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	86.07	10874
2020/05/28	170369	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.96	10874
2020/05/28	170374	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.47	10874
2020/05/28	170754	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	5.89	10874

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Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/05/28	186288	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.55	10874
2020/05/28	186680	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.10	10874
2020/05/28	186915	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	158.05	10874
2020/05/28	187199	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.90	10874
2020/05/28	188058	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	241.82	10874
2020/05/28	190329	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.04	10874
2020/05/28	190510	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.63	10874
2020/05/28	190545	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.80	10874
2020/05/29	170300	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.05	10876
2020/05/29	170329	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.35	10876
2020/05/29	170357	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	145.09	10876
2020/05/29	186382	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.82	10876
2020/05/29	186390	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	119.50	10876
2020/05/29	186681	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	173.66	10876
2020/05/29	186725	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.99	10876
2020/05/29	187200	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.32	10876
2020/05/29	187976	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.62	10876
2020/05/29	188057	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	244.19	10876
2020/05/29	190328	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.33	10876
2020/05/29	190511	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	29.14	10876
2020/05/29	190952	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	240.88	10876
2020/05/30	170271	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	201.03	10876
2020/05/30	170328	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	113.17	10876
2020/05/30	170356	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.65	10876
2020/05/30	170370	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.55	10876
2020/05/30	186384	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.99	10876
2020/05/30	186389	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.29	10876
2020/05/30	186683	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.35	10876
2020/05/30	186867	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.55	10876
2020/05/30	187201	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.78	10876
2020/05/30	188056	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	241.91	10876
2020/05/30	190327	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.56	10876
2020/05/30	190953	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	158.58	10876
2020/05/31	170272	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.52	10876
2020/05/31	170354	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	76.96	10876
2020/05/31	170355	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	86.81	10876
2020/05/31	186397	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	166.53	10876
2020/05/31	186481	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	229.19	10876
2020/05/31	186540	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	156.36	10876
2020/05/31	186684	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.59	10876
2020/05/31	186868	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.49	10876
2020/05/31	186916	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	156.37	10876
2020/05/31	187185	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.42	10876
2020/05/31	187202	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.54	10876
2020/05/31	187854	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.37	10876
2020/05/31	188055	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.79	10876
2020/06/01	170273	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.14	10879.01
2020/06/01	170351	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	114.47	10879.01
2020/06/01	170353	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	28.21	10879.01
2020/06/01	186541	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.45	10879.01
2020/06/01	186869	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.30	10879.01
2020/06/01	187190	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.09	10879.01
2020/06/01	187203	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.85	10879.01
2020/06/01	187853	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.96	10879.01
2020/06/01	187972	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.45	10879.01
2020/06/01	188054	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	158.74	10879.01
2020/06/01	190438	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.01	10879.01
2020/06/02	170274	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	239.67	10879.01
2020/06/02	170290	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	166.05	10879.01
2020/06/02	170302	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.42	10879.01
2020/06/02	170345	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.50	10879.01
2020/06/02	186385	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	157.37	10879.01
2020/06/02	186483	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.34	10879.01
2020/06/02	186542	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.80	10879.01
2020/06/02	186985	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.80	10879.01
2020/06/02	187189	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.09	10879.01
2020/06/02	187204	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.16	10879.01
2020/06/02	187974	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.34	10879.01

Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/06/02	188053	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	200.24	10879.01
2020/06/02	190512	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.74	10879.01
2020/06/03	170275	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.70	10879.01
2020/06/03	170291	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	164.25	10879.01
2020/06/03	170303	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.58	10879.01
2020/06/03	170352	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	156.12	10879.01
2020/06/03	170793	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.91	10879.01
2020/06/03	186388	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	38.49	10879.01
2020/06/03	186543	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.65	10879.01
2020/06/03	186986	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.49	10879.01
2020/06/03	187206	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.63	10879.01
2020/06/03	187760	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	151.73	10879.01
2020/06/03	187835	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	229.86	10879.01
2020/06/03	187960	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	153.05	10879.01
2020/06/03	187973	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	80.45	10879.01
2020/06/03	188052	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	118.78	10879.01
2020/06/04	170276	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	160.40	10879.01
2020/06/04	170292	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	138.95	10879.01
2020/06/04	170350	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	157.52	10879.01
2020/06/04	170371	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	80.11	10879.01
2020/06/04	170789	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.30	10879.01
2020/06/04	186480	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	38.14	10879.01
2020/06/04	186545	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	200.87	10879.01
2020/06/04	186685	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.12	10879.01
2020/06/04	186870	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.24	10879.01
2020/06/04	186917	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	78.34	10879.01
2020/06/04	186987	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.94	10879.01
2020/06/04	187206	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	84.34	10879.01
2020/06/04	188051	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	39.43	10879.01
2020/06/04	188182	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	191.95	10879.01
2020/06/05	170277	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.82	10879.01
2020/06/05	170294	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	28.26	10879.01
2020/06/05	170349	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.04	10879.01
2020/06/05	170372	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	191.43	10879.01
2020/06/05	186482	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	230.29	10879.01
2020/06/05	186723	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	112.95	10879.01
2020/06/05	186988	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	144.55	10879.01
2020/06/05	187207	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.54	10879.01
2020/06/05	188049	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	76.75	10879.01
2020/06/05	188050	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	79.78	10879.01
2020/06/05	190541	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.31	10879.01
2020/06/05	190960	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.70	10879.01
2020/06/06	170278	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	202.64	10879.01
2020/06/06	170348	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.42	10879.01
2020/06/06	181615	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.69	10879.01
2020/06/06	186596	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.20	10879.01
2020/06/06	186647	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.78	10879.01
2020/06/06	186724	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.81	10879.01
2020/06/06	186871	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.13	10879.01
2020/06/06	186989	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	117.26	10879.01
2020/06/06	188048	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.76	10879.01
2020/06/06	190544	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.94	10879.01
2020/06/06	190959	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	242.15	10879.01
2020/06/09	170279	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	201.21	10879.01
2020/06/09	170787	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.23	10879.01
2020/06/09	170796	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.01	10879.01
2020/06/09	186386	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.45	10879.01
2020/06/09	186391	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	114.04	10879.01
2020/06/09	186597	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.76	10879.01
2020/06/09	186872	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.67	10879.01
2020/06/09	186990	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.24	10879.01
2020/06/09	187063	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.22	10879.01
2020/06/09	187729	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	144.42	10879.01
2020/06/09	188046	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	241.29	10879.01
2020/06/09	190770	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.12	10879.01
2020/06/09	190958	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.78	10879.01
2020/06/09	190961	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	118.98	10879.01
2020/06/10	170280	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.78	10879.01

Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/06/10	170788	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.66	10879.01
2020/06/10	170795	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	116.22	10879.01
2020/06/10	170802	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	37.76	10879.01
2020/06/10	184305	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	200.49	10879.01
2020/06/10	186991	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	113.90	10879.01
2020/06/10	187060	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.66	10879.01
2020/06/10	187879	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	84.93	10879.01
2020/06/10	188047	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	192.14	10879.01
2020/06/10	188156	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.38	10879.01
2020/06/10	190537	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	85.19	10879.01
2020/06/10	190768	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.42	10879.01
2020/06/10	190964	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.74	10879.01
2020/06/11	170281	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	200.50	10879.01
2020/06/11	170327	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.20	10879.01
2020/06/11	184304	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	240.22	10879.01
2020/06/11	186599	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.07	10879.01
2020/06/11	186859	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.60	10879.01
2020/06/11	186992	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.48	10879.01
2020/06/11	187088	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.30	10879.01
2020/06/11	187598	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.48	10879.01
2020/06/11	190536	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.54	10879.01
2020/06/11	190954	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	155.94	10879.01
2020/06/11	190962	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	238.63	10879.01
2020/06/12	170282	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.93	10883
2020/06/12	170331	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.98	10883
2020/06/12	170794	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	116.49	10883
2020/06/12	184303	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	239.19	10883
2020/06/12	186602	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	84.91	10883
2020/06/12	186646	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	235.86	10883
2020/06/12	186729	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.54	10883
2020/06/12	186993	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.00	10883
2020/06/12	187085	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.55	10883
2020/06/12	187086	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.70	10883
2020/06/12	190535	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.76	10883
2020/06/12	190969	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.34	10883
2020/06/13	170283	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.52	10883
2020/06/13	170326	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.17	10883
2020/06/13	170757	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	112.92	10883
2020/06/13	170786	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.28	10883
2020/06/13	170813	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.11	10883
2020/06/13	170850	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.91	10883
2020/06/13	170863	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	28.18	10883
2020/06/13	186649	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.72	10883
2020/06/13	186726	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.74	10883
2020/06/13	186750	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.30	10883
2020/06/13	187083	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.10	10883
2020/06/13	187877	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.78	10883
2020/06/13	190966	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.65	10883
2020/06/14	169184	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.33	10883
2020/06/14	170284	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.66	10883
2020/06/14	170325	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.59	10883
2020/06/14	170346	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.42	10883
2020/06/14	170785	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.45	10883
2020/06/14	170862	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.96	10883
2020/06/14	170864	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	56.22	10883
2020/06/14	186686	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.45	10883
2020/06/14	186728	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	240.95	10883
2020/06/14	186994	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.01	10883
2020/06/14	187082	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	56.16	10883
2020/06/14	187761	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.52	10883
2020/06/14	187875	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	167.59	10883
2020/06/14	190967	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.34	10883
2020/06/15	166968	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.45	10883
2020/06/15	169185	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	233.91	10883
2020/06/15	170285	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.75	10883
2020/06/15	170332	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.46	10883
2020/06/15	170784	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.57	10883
2020/06/15	170860	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.38	10883

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Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/06/15	186687	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.20	10883
2020/06/15	186967	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	28.22	10883
2020/06/15	186968	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	83.29	10883
2020/06/15	186985	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	155.04	10883
2020/06/15	187081	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	156.47	10883
2020/06/15	188157	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	117.40	10883
2020/06/15	190591	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.71	10883
2020/06/15	190957	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.09	10883
2020/06/15	190968	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.93	10883
2020/06/16	169186	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.52	10883
2020/06/16	170286	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.67	10883
2020/06/16	170324	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.75	10883
2020/06/16	170347	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.29	10883
2020/06/16	170387	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	76.21	10883
2020/06/16	170783	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.57	10883
2020/06/16	170855	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	112.18	10883
2020/06/16	170865	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.49	10883
2020/06/16	170871	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.85	10883
2020/06/16	186688	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.12	10883
2020/06/16	186962	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.34	10883
2020/06/16	187971	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.24	10883
2020/06/16	188158	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.54	10883
2020/06/16	190576	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.02	10883
2020/06/16	190956	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	197.20	10883
2020/06/17	169187	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.89	10883
2020/06/17	170287	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.12	10883
2020/06/17	170336	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.42	10883
2020/06/17	170385	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	78.49	10883
2020/06/17	170758	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.84	10883
2020/06/17	170782	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.40	10883
2020/06/17	170866	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	216.42	10883
2020/06/17	186393	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.63	10883
2020/06/17	186547	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.25	10883
2020/06/17	186689	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.13	10883
2020/06/17	186963	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.07	10883
2020/06/17	187970	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.11	10883
2020/06/17	188159	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.93	10883
2020/06/17	190577	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.20	10883
2020/06/17	190585	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.90	10883
2020/06/18	169188	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	231.39	10883
2020/06/18	170337	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.67	10883
2020/06/18	170417	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	79.49	10883
2020/06/18	170458	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	120.29	10883
2020/06/18	170759	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.64	10883
2020/06/18	170781	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.65	10883
2020/06/18	170861	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.26	10883
2020/06/18	170872	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.74	10883
2020/06/18	186548	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.85	10883
2020/06/18	186964	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.37	10883
2020/06/18	187599	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.45	10883
2020/06/18	187969	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.36	10883
2020/06/18	190578	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.14	10883
2020/06/18	190584	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.44	10883
2020/06/19	169189	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	232.04	10883
2020/06/19	170311	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.07	10883
2020/06/19	170418	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.26	10883
2020/06/19	170780	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.99	10883
2020/06/19	170801	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	78.41	10883
2020/06/19	170859	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.41	10883
2020/06/19	181641	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	119.54	10883
2020/06/19	186394	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	139.40	10883
2020/06/19	186549	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.02	10883
2020/06/19	186716	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.37	10883
2020/06/19	186965	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.16	10883
2020/06/19	186970	MD of Bonnyville No 87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	168.63	10883
2020/06/19	190579	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	37.12	10883
2020/06/19	190582	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.60	10883
2020/06/20	169190	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.14	10883

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Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/06/20	170312	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.93	10883
2020/06/20	170419	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	239.21	10883
2020/06/20	170760	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	144.17	10883
2020/06/20	170779	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.65	10883
2020/06/20	170858	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.53	10883
2020/06/20	170873	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	242.29	10883
2020/06/20	170886	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.42	10883
2020/06/20	186717	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.57	10883
2020/06/20	186966	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.43	10883
2020/06/20	190583	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.25	10883
2020/06/21	169191	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	191.98	10883
2020/06/21	170313	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	111.24	10883
2020/06/21	170314	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	111.22	10883
2020/06/21	170420	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	157.65	10883
2020/06/21	170761	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	112.41	10883
2020/06/21	170778	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	112.57	10883
2020/06/21	170857	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.35	10883
2020/06/21	170874	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	157.18	10883
2020/06/21	170887	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	154.28	10883
2020/06/21	186398	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	155.82	10883
2020/06/21	186553	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	155.73	10883
2020/06/21	190580	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	116.02	10883
2020/06/22	170315	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.44	10883
2020/06/22	170317	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.15	10883
2020/06/22	170421	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.50	10883
2020/06/22	170457	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.03	10883
2020/06/22	170459	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	160.39	10883
2020/06/22	170762	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.44	10883
2020/06/22	170777	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.30	10883
2020/06/22	170876	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.90	10883
2020/06/22	170888	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.84	10883
2020/06/22	186554	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	198.84	10883
2020/06/22	186650	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	116.28	10883
2020/06/22	186651	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	77.55	10883
2020/06/22	186961	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	169.81	10883
2020/06/22	190587	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.24	10883
2020/06/23	170318	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	114.25	10883
2020/06/23	170422	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	158.85	10883
2020/06/23	170435	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	170.18	10883
2020/06/23	170460	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.31	10883
2020/06/23	170763	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.60	10883
2020/06/23	170776	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.50	10883
2020/06/23	170875	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	112.34	10883
2020/06/23	170889	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.38	10883
2020/06/23	170929	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	140.55	10883
2020/06/23	170945	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	141.67	10883
2020/06/23	186399	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.88	10883
2020/06/23	186652	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	195.60	10883
2020/06/23	186718	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	196.85	10883
2020/06/23	186730	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	240.08	10883
2020/06/23	186996	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	144.72	10883
2020/06/23	190368	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	193.74	10883
2020/06/23	190581	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	154.27	10883
2020/06/24	170461	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	242.34	10883
2020/06/24	170764	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	143.58	10883
2020/06/24	170775	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	114.57	10883
2020/06/24	170809	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	234.13	10883
2020/06/24	170891	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	236.83	10883
2020/06/24	170931	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	142.95	10883
2020/06/24	186395	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	114.20	10883
2020/06/24	186400	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.94	10883
2020/06/24	186653	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	237.68	10883
2020/06/24	186719	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	199.08	10883
2020/06/24	186731	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	203.77	10883
2020/06/24	186997	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	145.10	10883
2020/06/24	187059	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	171.34	10883
2020/06/24	187963	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	172.04	10883
2020/06/24	190586	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	194.71	10883

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JMB

JMB Crushing Systems Inc.

Ticket Date	Ticket#	Bill To Name	Loaded At	Unloaded At	Aggregate Size	Quantity	Invoice#
2020/06/25	169183	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	79.61	10883
2020/06/25	170462	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	79.78	10883
2020/06/25	170765	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	57.64	10883
2020/06/25	170839	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	115.24	10883
2020/06/25	170892	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	77.46	10883
2020/06/25	170932	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	85.53	10883
2020/06/25	186396	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	56.81	10883
2020/06/25	186401	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	77.37	10883
2020/06/25	186654	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	77.98	10883
2020/06/25	186732	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	120.03	10883
2020/06/25	186998	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	57.72	10883
2020/06/25	187058	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	86.18	10883
2020/06/25	187964	MD of Bonnyville No.87	Shankowski Pit	Bonnyville Yard	Des 2 Class 16	56.45	10883
						149,160.37	
						149,160.37	
						198,157.99	

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This is Exhibit "J" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
in and for the Province of Alberta.
My Commission expires Aug. 13, 20[illegible]

CERTIFIED COPY OF

Certificate of Title

S

LINC
0037 711 496

SHORT LEGAL
4;7;56;16;NW

TITLE NUMBER: 172 269 783 +2
ROAD PLAN
DATE: 16/10/2017

AT THE TIME OF THIS CERTIFICATION

HELEN HAVENER
OF BOX 598, ELK POINT
ALBERTA T0A 1A0
AS TO AN UNDIVIDED 1/2 INTEREST

GAIL CHARLENE HAVENER
OF BOX 608, ELK POINT
ALBERTA T0A 1A0
AS TO AN UNDIVIDED 1/2 INTEREST

ARE THE OWNERS OF AN ESTATE IN FEE SIMPLE
OF AND IN

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 16
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT:

	HECTARES	(ACRES) MORE OR LESS
A) PLAN 4286BM - ROAD	0.0004	0.001
B) ALL THAT PORTION COMMENCING AT THE SOUTH WEST CORNER OF THE SAID SAID QUARTER SECTION; THENCE EASTERLY ALONG THE SOUTH BOUNDARY 110 METRES; THENCE NORTHERLY AND PARALLEL TO THE WEST BOUNDARY OF THE SAID QUARTER 110 METRES; THENCE WESTERLY AND PARALLEL TO THE SAID SOUTH BOUNDARY TO A POINT ON THE WEST BOUNDARY; THENCE SOUTHERLY ALONG THE SAID WEST BOUNDARY TO THE POINT OF COMMENCEMENT CONTAINING	1.21	3.00
C) PLAN 1722948 - ROAD	0.360	0.89

EXCEPTING THEREOUT ALL MINES AND MINERALS

SUBJECT TO THE ENCUMBRANCES, LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDERWRITTEN OR ENDORSED HEREON, OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
882 162 859	19/07/1988	CAVEAT RE : EASEMENT CAVEATOR - JIMMY DAVID YARMUCH BOX 645 ELK POINT ALBERTA T0A1A0 (DATA UPDATED BY: TRANSFER OF CAVEAT 0123833251)
972 003 876	06/01/1997	CAVEAT RE : SURFACE LEASE CAVEATOR - CANADIAN NATURAL RESOURCES LIMITED.

(CONTINUED)

CERTIFIED COPY OF

Certificate of Title

SHORT LEGAL 4;7;56;16;NW
NAME HELEN HAVENER ET AL
NUMBER 172 269 783 +2

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		BOX 6926, STATION "D" CALGARY ALBERTA T2P2G1 AGENT - DONNA FELLOWS (DATA UPDATED BY: CHANGE OF NAME 042462572)
972 229 534	05/08/1997	UTILITY RIGHT OF WAY GRANTEE - CANADIAN NATURAL RESOURCES LIMITED. BOX 6926, STATION "D" CALGARY ALBERTA T2P2G1 (DATA UPDATED BY: CHANGE OF NAME 042463878)
002 170 374	20/06/2000	CAVEAT RE : ROYALTY AGREEMENT CAVEATOR - JMB CRUSHING SYSTEMS LTD. P O BOX 478 ELK POINT ALBERTA T0A1A0
202 104 972	13/05/2020	BUILDER'S LIEN LIENOR - J.R. PAINE & ASSOCIATES LTD. C/O SCOTT LAW 17505 106 AVE EDMONTON ALBERTA T5S1E7 AGENT - JOHN SCHRODER AMOUNT: $64,207
202 106 449	15/05/2020	BUILDER'S LIEN LIENOR - REES AGGREGATE CONSULTING LTD. C/O PUTNAM & DAWSON 9702-100 STREET MORINVILLE ALBERTA T8R1G3 AGENT - MAXWELL C PUTNAM AMOUNT: $1,270,751

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 15 DAY OF MAY ,2020

REGISTRAR OF LAND TITLES

SUPPLEMENTARY INFORMATION

MUNICIPALITY: COUNTY OF ST. PAUL NO. 19
REFERENCE NUMBER:
072 148 823
TOTAL INSTRUMENTS: 006

This is Exhibit "K" referred to in the Affidavit of Jason Panter sworn before me this 9th day of October, 2020.

Natalie Birtwistle

A Commissioner for Oaths in and for the Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
in and for the Province of Alberta.
My Commission expires Aug. 13, 2022

CERTIFIED COPY OF

Certificate of Title

LINC	SHORT LEGAL
0037 711 520	4;7;56;21;NW
0037 711 538	4;7;56;21;SW

TITLE NUMBER: 172 259 783 45
ROAD PLAN
DATE: 25/10/2017

AT THE TIME OF THIS CERTIFICATION

JERRY SHANKOWSKI
OF 7727-81 AVE NW
EDMONTON
ALBERTA T6C 0V4

IS THE OWNER OF AN ESTATE IN FEE SIMPLE
OF AND IN

FIRST

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER NORTH WEST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
A) PLAN 1722948 - ROAD 0.417 1.03

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SECOND

MERIDIAN 4 RANGE 7 TOWNSHIP 56
SECTION 21
QUARTER SOUTH WEST
CONTAINING 64.7 HECTARES (160 ACRES) MORE OR LESS
EXCEPTING THEREOUT: HECTARES (ACRES) MORE OR LESS
A) PLAN 1722948 - ROAD 0.417 1.03

EXCEPTING THEREOUT ALL MINES AND MINERALS
AND THE RIGHT TO WORK THE SAME

SUBJECT TO THE ENCUMBRANCES, LIENS AND INTERESTS NOTIFIED BY MEMORANDUM UNDERWRITTEN OR ENDORSED HEREON, OR WHICH MAY HEREAFTER BE MADE IN THE REGISTER.

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
862 021 825	30/01/1986	UTILITY RIGHT OF WAY GRANTEE - ALBERTA POWER LIMITED. AS TO PORTION OR PLAN:4286EM
972 235 435	06/08/1997	CAVEAT RE : RIGHT OF WAY AGREEMENT CAVEATOR - CANADIAN NATURAL RESOURCES LIMITED. BOX 6926, STATION "D" CALGARY

(CONTINUED)

CERTIFIED COPY OF PAGE 2

Certificate of Title

SHORT LEGAL 4;7;56;21;NW,SW
NAME JERRY SHANKOWSKI
NUMBER 172 269 783 +5

ENCUMBRANCES, LIENS & INTERESTS

REGISTRATION NUMBER	DATE (D/M/Y)	PARTICULARS
		ALBERTA T2P3G1 AGENT - DONNA FELLOWS AFFECTED LAND: 4;7;56;21;SW (DATA UPDATED BY: CHANGE OF NAME 042462560)
202 104 972	13/05/2020	BUILDER'S LIEN LIENOR - J.R. PAINE & ASSOCIATES LTD. C/O SCOTT LAW 17505 106 AVE EDMONTON ALBERTA T5S1E7 AGENT - JOHN SCHRODER AMOUNT: $64,207
202 106 447	15/05/2020	BUILDER'S LIEN LIENOR - RBEE AGGREGATE CONSULTING LTD. C/O PUTNAM & LAWSON 9702-100 STREET MORINVILLE ALBERTA T8R1G3 AGENT - MAXWELL C PUTNAM AMOUNT: $1,270,791

THE REGISTRAR OF TITLES CERTIFIES THIS TO BE AN ACCURATE REPRODUCTION OF THE CERTIFICATE OF TITLE REPRESENTED HEREIN THIS 15 DAY OF MAY ,2020

REGISTRAR OF LAND TITLES

SUPPLEMENTARY INFORMATION

MUNICIPALITY: COUNTY OF ST. PAUL NO. 19
REFERENCE NUMBER:
152 341 245 +2
TOTAL INSTRUMENTS: 004

COURT FILE NO.	2001-05482
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
	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 JMB CRUSHING SYSTEMS INC. and 2161889 ALBERTA LTD. AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF JMB CRUSHING SYSTEMS INC. and MANTLE MATERIALS GROUP, LTD.
APPLICANTS	JMB CRUSHING SYSTEMS INC., 2161889 ALBERTA LTD., and MANTLE MATERIALS GROUP, LTD.
DOCUMENT	**CERTIFICATE OF REMOTE COMMISSIONING FOR THE AFFIDAVIT OF JASON PANTER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**Gowling WLG (Canada) LLP** 1600, 421 – 7th Avenue SW Calgary, AB T2P 4K9 Attn: **Tom Cumming/Caireen E. Hanert/Alison J. Gray** Phone: 403.298.1938/403.298.1992/403.298.1841 Fax: 403.263.9193 File No.: A163514

I, Natalie Birtwistle, a Commissioner for Oaths in and for the Province of Alberta, certify that the requirements outlined in the Court of Queen's Bench of Alberta, Notice to the Profession and Public, "Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During the COVID-19 Pandemic" dated March 25, 2020 (the "Notice"), has been complied with as follows:

1. I met with Jason Panter on October 9, 2020, using video technology.

2. While connected to video technology, I undertook the following steps in accordance with the Notice:

   (a) verified and retained "screenshot" copies of the front and back of Jason Panter's valid government issued photo identification;

   (b) verified that both parties had a paper copy of the Affidavit and all Exhibits before them during the video conference;

(c) reviewed every page of the Affidavit and Exhibits with Jason Panter, with both parties initialing the lower right corner of each page to verify the pages are identical; and

(d) administered the oath at the end of the review and observed Jason Panter sign his name to the Affidavit.

3. I received the signed Affidavit with Exhibits from Jason Panter electronically, and upon receipt, verified that this copy was identical to the one I initialed during the video conference, and signed the jurat. Both copies are attached to this Certificate.

4. I believe that remote commissioning is necessary because it is impossible or unsafe, for medical reasons, to physically meet with Jason Panter to commission the Affidavit.

SIGNED at the City of Calgary, Alberta,
this 9th day of October, 2020.

Natalie Birtwistle

Commissioner for Oaths in and for the
Province of Alberta

NATALIE BIRTWISTLE
A Commissioner for Oaths
in and for the Province of Alberta.
My Commission expires Aug. 13, 2021

PUBLIC WORKS ACT, RSA 2000, c. P-46, s. 14

Alberta Statutes

RSA 2000, c. P-46, s. 14

Alberta Statutes > PUBLIC WORKS ACT > Payment of Public Works Creditors

Notice

Current Version: Effective 01-07-2002

SECTION 14

Notice of claim

14(1) When

(a) a person provides labour, equipment, material or services used or reasonably required for use in the performance of a contract with the Crown for the construction, alteration, demolition, repair or maintenance of a public work, and

(b) that person is not paid by the party who is legally obliged to pay that person,

that person may send a notice of that person's claim to the Minister, or agent of the Crown that is responsible for the public work.

(2) In the case of a claim arising out of the performance of a contract entered into by the Crown for work on a highway or road as defined in section 1 of Schedule 14 of the Government Organization Act, the notice of claim must

(a) be sent by registered mail not sooner than 30 days nor later than 90 days after the last day on which the labour, equipment, material or services were provided, and

(b) set out the nature and amount of the claim in a form satisfactory to the Crown.

(3) The notice of claim, other than for a claim referred to in subsection (2), must

(a) be sent by registered mail not later than 45 days after the last day on which the labour, equipment, material or services were provided, and

(b) set out the nature and amount of the claim in a form satisfactory to the Crown.

End of Document

BUILDERS' LIEN ACT, RSA 2000, c. B-7, s. 18

Alberta Statutes

RSA 2000, c. B-7, s. 18

Alberta Statutes > BUILDERS' LIEN ACT

Notice

Current Version: Effective 01-04-2002

SECTION 18

Major lien fund

18 (1) Irrespective of whether a contract provides for instalment payments or payment on completion of the contract, an owner who is liable on a contract under which a lien may arise shall, when making payment on the contract, retain an amount equal to 10% of the value of the work actually done and materials actually furnished for a period of 45 days from

(a) the date of issue of a certificate of substantial performance of the contract, in a case where a certificate of substantial performance is issued, or

(b) the date of completion of the contract, in a case where a certificate of substantial performance is not issued.

(1.1) Notwithstanding subsection (1) and irrespective of whether a contract provides for instalment payments or payment on completion of the contract, an owner who is liable on a contract with respect to improvements to an oil or gas well or to an oil or gas well site under which a lien may arise shall, when making payment on the contract, retain an amount equal to 10% of the value of the work actually done and materials actually furnished for a period of 90 days from

(a) the date of issue of a certificate of substantial performance of the contract, in a case where a certificate of substantial performance is issued, or

(b) the date of completion of the contract, in a case where a certificate of substantial performance is not issued.

(2) In addition to the amount retained under subsection (1) or (1.1), the owner shall also retain, during any time while a lien is registered, any amount payable under the contract that has not been paid under the contract that is over and above the 10% referred to in subsection (1) or (1.1).

(3) Except as provided in section 13(1), when a lien is claimed by a person other than the contractor, it does not attach so as to make the major lien fund liable for a sum greater than the total of

(a) 10% of the value of the work actually done or materials actually furnished by the contractor or subcontractor for whom and at whose request the work was done or the materials were supplied giving rise to the claim of lien, and

(b) any additional sum due and owing but unpaid to that contractor or subcontractor for work done or materials furnished.

(4) Except as provided in section 13(1), when, in respect of liens to which this section applies, there is more than one lien claim arising from work done or materials furnished for and at the request of the contractor or the same subcontractor, they do not attach so as to make the major lien fund liable in their cumulative total for a sum greater than the total of

(a) 10% of the value of the work actually done or materials actually furnished by the contractor or subcontractor, as the case may be, and

(b) any additional sum due and owing but unpaid to that contractor or subcontractor for work done or materials furnished.

(5) A payment of an amount, other than that required to be retained under subsection (1) or (1.1), that is made in good faith by an owner or mortgagee to a contractor at a time when there is not any lien registered is valid, so that the major lien fund is reduced by the amount of the payment.

(6) If a contractor or subcontractor defaults in completing the contractor's or subcontractor's contract, the major lien fund

(a) shall not, as against a lienholder, be applied to the completion of the contract or for any purpose other than the satisfaction of liens, and

(b) when distributed, shall be distributed in the manner prescribed by section 61.

(7) A person who in good faith underestimates the value of the work actually done or materials actually furnished at any specific time and retains the percentage of the value required to be retained by this section, calculated on that underestimated value, does not lose the protection afforded by this Act if the person provides, for the satisfaction of liens in accordance with this Act, an amount equal to the correct amount that should have been retained pursuant to this section.

End of Document

HTR-20 Nature of express trust.

Halsbury's Laws of Canada - Trusts (2020 Reissue)

Maria Elena Hoffstein

HTR-20

Halsbury's Laws of Canada - Trusts (2020 Reissue) (Hoffstein) > III. Express Trusts > 1. General

III. Express Trusts

1. General

Nature of express trust.

An express trust arises when a person (settlor) has expressed an intention to transfer property to one party (trustee) for the benefit of one or more other parties (beneficiaries). It may be contrasted with resulting or constructive trusts, which arise by operation of law.[1] In the creation of an express trust, the intention of the settlor may be expressed orally, by deed or by will.[2]

Types of trusts. Express trusts may be subdivided into various types of trusts. For instance, there is a distinction between trusts for persons[3] and trusts for purposes. The former are trusts for the benefit of individuals or corporations; the latter have no beneficiaries, only defined purposes.

Executed (fixed) trusts. Within the category of express trusts, there is also a distinction between executed and executory trusts. Executed trusts are those in which the settlor has completely set out the beneficial interests, but the trusts are not necessarily fully administered or completed. The court will interpret such trusts according to the strict legal meaning of the language used.

Executory (discretionary) trusts. An executory trust is one in which the settlor has expressed merely a general intention regarding the beneficiaries of the trust, the final disposition being left to a later date or to other persons.[4] This trust is often used in the context of marriage settlements where the issue of the marriage must later be provided for, in trusts with powers of appointment, and in discretionary trusts. In interpreting an executory trust, courts will look at the whole document of the trust to determine and carry out the real intention of the settlor.

Footnote(s)

1 See IV ("Trusts Arising by Operation of Law").

2 See III.2(3)(b) ("Certainty of Intention").

3 These trusts are sometimes called "private trusts".

4 See *Kingsdale Securities Co. v. Canada (M.N.R.)*, [1974] F.C.J. No. 182, [1974] 2 F.C. 760 at para. 19 (Fed. C.A.): "While executory trusts can be created using fewer formalities than are required in bringing executed trusts into existence, they cannot be created unless the intention of the settlors can be ascertained."

End of Document

HTR-27 Overview.

Halsbury's Laws of Canada - Trusts (2020 Reissue)

Maria Elena Hoffstein

HTR-27

Halsbury's Laws of Canada - Trusts (2020 Reissue) (Hoffstein) > III. Express Trusts > 2. Requirements > (3) The Three Certainties > (c) Certainty of Subject-Matter

III. Express Trusts

2. Requirements

(3) The Three Certainties

(c) Certainty of Subject-Matter

Overview.

To create a valid trust, the property must be either clearly described in the trust instrument or there must be a formula or method given for identifying it.[1] The language of the trust must also define the portion of property which each beneficiary is to receive, or must vest the discretion to so decide in the trustees. The court may, upon request by the trustees, determine the quantum of the trust property from objective standards outlined in the trust document, in order to save the trust from failing.

Identification of subject-matter. All property may be the subject matter of a trust. Therefore, all equitable and legal interests in realty or personalty may be the subject-matter of a trust. To meet the certainty of subject-matter requirement, the subject-matter of the trust must be ascertained or ascertainable. Subject-matter is ascertained when it is a fixed amount or specific piece of property.[2] It is ascertainable when the language of the trust or other related source describes a method by which the subject-matter may be identified.

Identification of beneficiaries' interest. The quantum of the beneficiaries' interest in the subject-matter of the trust must be certain. If not, the trust will fail and the property will result to the creator's estate.[3] Nevertheless, such uncertainty may be cured by the court. In doing so, it could rely on the equitable maxim "equity is equality", thereby assigning equal portions of the subject-matter to the beneficiaries. Another way to cure this uncertainty is for the creator to expressly give the trustees the discretion to decide the quantum of the beneficiaries' interest.[4] A third way to cure the uncertainty is to ascertain the portion of the beneficial interest through an objective interpretation of the trust instrument.[5]

Footnote(s)

1 G.G. Bogert & G.T. Bogert, *Handbook of the Law of Trusts*, 5th ed. (1973) at 72.

2 Potential ambiguity in a deed of trust as to the subject matter may be resolved through interpretation, within the background of how the deed was drawn, in light of the factual matrix: *Grewal v. Khakh*, [2018] B.C.J. No. 3227, 2018 BCCA 357 at paras. 29 and 33 (B.C.C.A.).

3 *Ernst & Young Inc. v. Central Guaranty Trust Co.*, [2001] A.J. No. 148, 283 A.R. 325 (Alta. Q.B.), additional reasons at [2002] A.J. No. 374, 304 A.R. 1 (Alta. Q.B.), revd [2006] A.J. No. 1413 (Alta. C.A.).

4 *Wilce v. Van Anden*, 248 Ill. 358, 94 N.E. 42 (1911), especially at 45.

5 *Golay's Will Trusts (Re)*, [1965] 1 W.L.R. 969, [1965] 2 All E.R. 660 (Ch. Div.). See also, *White Bear First Nations v. Canada (Minister of Indian Affairs and Northern Development)*, [2012] F.C.J. No. 1104, 2012 FCA 224 (F.C.A.), where the Minister breached his obligations as trustee of three Bands' funds when, pending litigation over the Bands' entitlements, he transferred two-thirds of the money in accounts held in the appellant's name to a suspense account. The Minister had had concerns about claims against the Crown should the appellant have depleted the account. By granting the appellant access to one-third of the fund, while denying access to the other two Bands, the Minister breached his duty to act even-handedly. He ought to have applied to the court for directions.

End of Document

HTR-29 When trust is completely constituted.

Halsbury's Laws of Canada - Trusts (2020 Reissue)

Maria Elena Hoffstein

HTR-29

Halsbury's Laws of Canada - Trusts (2020 Reissue) (Hoffstein) > III. Express Trusts > 2. Requirements > (4) Constitution of Trusts > (a) Complete Constitution

III. Express Trusts

2. Requirements

(4) Constitution of Trusts

(a) Complete Constitution

When trust is completely constituted.

A valid express trust must be completely constituted. A completely constituted trust is one in which the settlor has properly declared the trust and conveyed the property of the trust to the trustees. Constitution of a trust may occur in one of three ways: direct transfer of the property by the creator of the trust to trustees; transfer of the property to the trustees by a third party; or declaration of the creator as trustee.

Transferring property. A person can transfer property to another in three ways:

(1) an outright transfer by way of gift, sale or assignment[1]

(2) a transfer of property to trustees for beneficiaries or

(3) by declaring oneself to be trustee of property for another

The second and third options are discussed below. Once a trust is constituted in the absence of a power of revocation, the creator of the trust cannot revoke the trust.

Transfer to trustees. Title to the trust property will be vested in the trustees if the settlor effects a valid transfer of the property. The proper method of transfer depends on the particular form of property being transferred. Therefore, to examine the validity of the transfer, one must first determine whether the property is legal or equitable, and whether certain legal requirements flow from its classification. For example, certain requirements attach to realty, choses in possession, and choses in action, respectively.[2] Furthermore, instead of the settlor effecting such a transfer, a third party may also constitute a trust by a transfer of title to the trustees.[3]

Declaration of self as trustee. Constitution of a trust can occur "automatically" where a person declares him- or herself to be trustee of something for another. Problems often arise in situations where it is difficult to determine whether the owner of the trust property has actually declared him- or herself as trustee. To prove that the owner did intend to be trustee of the property, there must be a manifestation of the intention to become a trustee for another person.[4]

Footnote(s)

1 Elaboration on this point is beyond the scope of this title. The interested reader can refer to B. Ziff, *Principles of Property Law*, 7th ed., (Toronto: Carswell, 2018).

2 *Milroy v. Lord* (1862), 4 De G.F. & J. 264, 45 E.R. 1185.

3 *Ralli's (Re)*, [1964] Ch. 288, [1963] 3 All E.R. 940 (Ch. Div.).

4 *Paul v. Constance*, [1977] 1 W.L.R. 527, [1977] 1 All E.R. 195 (C.A.).

End of Document

Century Services Inc. v. Canada (Attorney General), [2010] S.C.J. No. 60

Supreme Court of Canada Judgments

Supreme Court of Canada

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

Heard: May 11, 2010;

Judgment: December 16, 2010.

File No.: 33239.

[2010] S.C.J. No. 60 | [2010] A.C.S. no 60 | 2010 SCC 60 | [2010] 3 S.C.R. 379 | [2010] 3 R.C.S. 379 | 2011 D.T.C. 5006 | 409 N.R. 201 | 296 B.C.A.C. 1 | 12 B.C.L.R. (5th) 1 | 2010 CarswellBC 3419 | 326 D.L.R. (4th) 577 | EYB 2010-183759 | 2011EXP-9 | J.E. 2011-5 | 2011 G.T.C. 2006 | [2011] 2 W.W.R. 383 | 72 C.B.R. (5th) 170 | [2010] G.S.T.C. 186 | 196 A.C.W.S. (3d) 27

Century Services Inc., Appellant; v. Attorney General of Canada on behalf of Her Majesty The Queen in Right of Canada, Respondent.

(136 paras.)

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Case Summary

Bankruptcy and insolvency law — Companies' Creditors Arrangement Act (CCAA) matters — Application of Act — Compromises and arrangements — Where Crown affected — Effect of related legislation — Bankruptcy and Insolvency Act — Appeal by Century Services Inc. from judgment of British Columbia Court of Appeal reversing a judgment dismissing a Crown application for payment of unremitted GST monies allowed — Section 222(3) of the Excise Tax Act evinced no explicit intention of Parliament to repeal s. 18.3 of CCAA — Parliament's intent with respect to GST deemed trusts was to be found in the CCAA — Judge had the discretion under the CCAA to continue the stay of the Crown's claim for enforcement of the GST deemed trust while otherwise lifting it to permit debtor company to make an assignment in bankruptcy.

Appeal by Century Services Inc. from a judgment of the British Columbia Court of Appeal reversing a judgment dismissing a Crown application for payment of unremitted GST monies. The debtor company commenced proceedings under the Companies' Creditors Arrangement Act (CCAA), obtaining a stay of proceedings with a view to reorganizing its financial affairs. Among the debts owed by the debtor company at the commencement of the reorganization was an amount of GST collected but unremitted to the Crown. The Excise Tax Act (ETA) created a deemed trust in favour of the Crown for amounts collected in respect of GST. The ETA provided that the deemed trust operated despite any other enactment of Canada except the Bankruptcy and Insolvency Act (BIA). However, the CCAA also provided that subject to certain exceptions, none of which mentioned GST, deemed trusts in favour of the Crown did not operate under the CCAA. In the context of the CCAA proceedings, a chambers judge approved a payment not exceeding $5 million to the debtor company's major secured creditor, Century Services. The judge agreed to the debtor company's proposal to hold back an amount equal to the GST monies collected but unremitted to the Crown and place it in the Monitor's trust account until the outcome of the

reorganization was known. After concluding that reorganization was not possible, the debtor company sought leave to partially lift the stay of proceedings so it could make an assignment in bankruptcy under the Bankruptcy and Insolvency Act (BIA). The Crown sought an order that the GST monies held by the Monitor be paid to the Receiver General of Canada. The judge denied the Crown's motion, and allowed the assignment in bankruptcy. The Court of Appeal found two independent bases for allowing the Crown's appeal. First, the court's authority under s. 11 of the CCAA was held not to extend to staying the Crown's application for immediate payment of the GST funds subject to the deemed trust after it was clear that reorganization efforts had failed and that bankruptcy was inevitable. As restructuring was no longer a possibility, staying the Crown's claim to the GST funds no longer served a purpose under the CCAA and the court was bound under the priority scheme provided by the ETA to allow payment to the Crown. Second, the Court of Appeal concluded that by ordering the GST funds segregated in the Monitor's trust account, the judge had created an express trust in favour of the Crown from which the monies in question could not be diverted for any other purposes.

HELD: Appeal allowed.

Section 222(3) of the ETA evinced no explicit intention of Parliament to repeal CCAA s. 18.3. Had Parliament sought to give the Crown a priority for GST claims, it could have done so explicitly, as it did for source deductions. There was no express statutory basis for concluding that GST claims enjoyed a preferred treatment under the CCAA or the BIA. Parliament's intent with respect to GST deemed trusts was to be found in the CCAA. With respect to the scope of a court's discretion when supervising reorganization, the broad discretionary jurisdiction conferred on the supervising judge had to be interpreted having regard to the remedial nature of the CCAA and insolvency legislation generally. The question was whether the order advanced the underlying purpose of the CCAA. The judge's order staying Crown enforcement of the GST claim ensured that creditors would not be disadvantaged by the attempted reorganization under the CCAA. The effect of his order was to blunt any impulse of creditors to interfere in an orderly liquidation. His order was thus in furtherance of the CCAA's objectives to the extent that it allowed a bridge between the CCAA and BIA proceedings. The order fostered a harmonious transition between reorganization and liquidation while meeting the objective of a single collective proceeding that was common to both statutes. The breadth of the court's discretion under the CCAA was sufficient to lift the stay to allow entry into liquidation. No express trust was created by the judge's order because there was no certainty of object inferrable from his order. Further, no deemed trust was created.

Statutes, Regulations and Rules Cited:

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts, S.C. 2005, c. 47, s. 69, s. 128, s. 131

Bank Act, *S.C. 1991, c. 46*,

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-, s. 67, s. 86

Canada Pension Plan, *R.S.C. 1985, c. C-8, s. 23*

Cities and Towns Act, R.S.Q., c. C-19,

Civil Code of QuÚbec, S.Q. 1991, c. 64, art. 2930

Companies' Creditors Arrangement Act, *R.S.C. 1985, c. C-36, s. 11*, s. 11.4, s. 18.3, s. 18.4, s. 20, s. 21

Companies' Creditors Arrangement Act, 1933, S.C. 1932-33, c. 36,

Employment Insurance Act, S.C. 1996, c. 23, s. 86(2), s. 86(2.1)

Excise Tax Act, R.S.C. 1985, c. E-15, s. 222

Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), s. 227(4), s. 227(4.1)

Interpretation Act, R.S.C. 1985, c. I-21, s. 2, s. 44(f)

Personal Property Security Act, S.A. 1988, c. P-4.05,

Winding-up and Restructuring Act, R.S.C. 1985, c. W-11,

Subsequent History:

NOTE: This document is subject to editorial revision before its reproduction in final form in the Canada Supreme Court Reports.

Court Catchwords:

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

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

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

Court Summary:

The debtor company commenced proceedings under the *Companies' Creditors Arrangement Act* ("*CCAA*"), obtaining a stay of proceedings to allow it time to reorganize its financial affairs. One of the debtor company's outstanding debts at the commencement of the reorganization was an amount of unremitted Goods and Services Tax ("GST") payable to the Crown. Section 222(3) of the *Excise Tax Act* ("*ETA*") created a deemed trust over unremitted GST, which operated despite any other enactment of Canada except the *Bankruptcy and Insolvency Act* ("*BIA*"). However, s. 18.3(1) of the *CCAA* provided that any statutory deemed trusts in favour of the Crown did not operate under the *CCAA*, subject to certain exceptions, none of which mentioned GST.

Pursuant to an order of the *CCAA* chambers judge, a payment not exceeding $5 million was approved to the debtor company's major secured creditor, Century Services. However, the chambers judge also ordered the debtor company to hold back and segregate in the Monitor's trust account an amount equal to the unremitted GST pending the outcome of the reorganization. On concluding that reorganization was not possible, the debtor company sought leave of the court to partially lift the stay of proceedings so it could make an assignment in bankruptcy under the *BIA*. The Crown moved for immediate payment of unremitted GST to the Receiver General. The chambers judge denied the Crown's motion, and allowed the assignment in bankruptcy. The Court of Appeal allowed the appeal on two grounds. First, it reasoned that once reorganization efforts had failed, the chambers judge was bound under the priority scheme provided by the *ETA* to allow payment of unremitted GST

to the Crown and had no discretion under s. 11 of the *CCAA* to continue the stay against the Crown's claim. Second, the Court of Appeal concluded that by ordering the GST funds segregated in the Monitor's trust account, the chambers judge had created an express trust in favour of the Crown.

Held (Abella J. dissenting): The appeal should be allowed.

Per McLachlin C.J., Binnie, LeBel, **Deschamps**, Charron, Rothstein and Cromwell JJ.: The apparent conflict between s. 222(3) of the *ETA* and s. 18.3(1) of the *CCAA* can be resolved through an interpretation that properly recognizes the history of the *CCAA*, its function amidst the body of insolvency legislation enacted by Parliament and the principles for interpreting the *CCAA* that have been recognized in the jurisprudence. The history of the *CCAA* distinguishes it from the *BIA* because although these statutes share the same remedial purpose of avoiding the social and economic costs of liquidating a debtor's assets, the *CCAA* offers more flexibility and greater judicial discretion than the rules-based mechanism under the *BIA*, making the former more responsive to complex reorganizations. Because the *CCAA* is silent on what happens if reorganization fails, the *BIA* scheme of liquidation and distribution necessarily provides the backdrop against which creditors assess their priority in the event of bankruptcy. The contemporary thrust of legislative reform has been towards harmonizing aspects of insolvency law common to the *CCAA* and the *BIA*, and one of its important features has been a cutback in Crown priorities. Accordingly, the *CCAA* and the *BIA* both contain provisions nullifying statutory deemed trusts in favour of the Crown, and both contain explicit exceptions exempting source deductions deemed trusts from this general rule. Meanwhile, both Acts are harmonious in treating other Crown claims as unsecured. No such clear and express language exists in those Acts carving out an exception for GST claims.

When faced with the apparent conflict between s. 222(3) of the *ETA* and s. 18.3(1) of the *CCAA*, courts have been inclined to follow *Ottawa Senators Hockey Club Corp.(Re)* and resolve the conflict in favour of the *ETA*. *Ottawa Senators* should not be followed. Rather, the *CCAA* provides the rule. Section 222(3) of the *ETA* evinces no explicit intention of Parliament to repeal *CCAA* s. 18.3. Where Parliament has sought to protect certain Crown claims through statutory deemed trusts and intended that these deemed trusts continue in insolvency, it has legislated so expressly and elaborately. Meanwhile, there is no express statutory basis for concluding that GST claims enjoy a preferred treatment under the *CCAA* or the *BIA*. The internal logic of the *CCAA* appears to subject a GST deemed trust to the waiver by Parliament of its priority. A strange asymmetry would result if differing treatments of GST deemed trusts under the *CCAA* and the *BIA* were found to exist, as this would encourage statute shopping, undermine the *CCAA*'s remedial purpose and invite the very social ills that the statute was enacted to avert. The later in time enactment of the more general s. 222(3) of the *ETA* does not require application of the doctrine of implied repeal to the earlier and more specific s. 18.3(1) of the *CCAA* in the circumstances of this case. In any event, recent amendments to the *CCAA* in 2005 resulted in s. 18.3 of the Act being renumbered and reformulated, making it the later in time provision. This confirms that Parliament's intent with respect to GST deemed trusts is to be found in the *CCAA*. The conflict between the *ETA* and the *CCAA* is more apparent than real.

The exercise of judicial discretion has allowed the *CCAA* to adapt and evolve to meet contemporary business and social needs. As reorganizations become increasingly complex, *CCAA* courts have been called upon to innovate. In determining their jurisdiction to sanction measures in a *CCAA* proceeding, courts should first interpret the provisions of the *CCAA* before turning to their inherent or equitable jurisdiction. Noteworthy in this regard is the expansive interpretation the language of the *CCAA* is capable of supporting. The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. The requirements of appropriateness, good faith and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. The question is whether the order will usefully further efforts to avoid the social and economic losses resulting from liquidation of an insolvent company, which extends to both the purpose of the order and the means it employs. Here, the chambers judge's order staying the Crown's GST claim was in furtherance of the *CCAA*'s objectives because it blunted the impulse of creditors to interfere in an orderly liquidation and fostered a harmonious transition from the *CCAA* to the *BIA*, meeting the objective of a single proceeding that is common to both statutes. The transition from the *CCAA* to the *BIA* may require the partial lifting of a stay of proceedings under the *CCAA* to allow commencement of *BIA* proceedings, but no gap exists between the two statutes because they operate in tandem and creditors in both cases look to the *BIA* scheme of distribution to foreshadow how they will fare if the reorganization is unsuccessful. The breadth of the court's

discretion under the *CCAA* is sufficient to construct a bridge to liquidation under the *BIA*. Hence, the chambers judge's order was authorized.

No express trust was created by the chambers judge's order in this case because there is no certainty of object inferrable from his order. Creation of an express trust requires certainty of intention, subject matter and object. At the time the chambers judge accepted the proposal to segregate the monies in the Monitor's trust account there was no certainty that the Crown would be the beneficiary, or object, of the trust because exactly who might take the money in the final result was in doubt. In any event, no dispute over the money would even arise under the interpretation of s. 18.3(1) of the *CCAA* established above, because the Crown's deemed trust priority over GST claims would be lost under the *CCAA* and the Crown would rank as an unsecured creditor for this amount.

Per Fish J.: The GST monies collected by the debtor are not subject to a deemed trust or priority in favour of the Crown. In recent years, Parliament has given detailed consideration to the Canadian insolvency scheme but has declined to amend the provisions at issue in this case, a deliberate exercise of legislative discretion. On the other hand, in upholding deemed trusts created by the *ETA* notwithstanding insolvency proceedings, courts have been unduly protective of Crown interests which Parliament itself has chosen to subordinate to competing prioritized claims. In the context of the Canadian insolvency regime, deemed trusts exist only where there is a statutory provision *creating* the trust and a *CCAA* or *BIA* provision explicitly *confirming* its effective operation. The *Income Tax Act*, the *Canada Pension Plan Act* and the *Employment Insurance Act* all contain deemed trust provisions that are strikingly similar to that in s. 222 of the *ETA* but they are all also confirmed in s. 37 of the *CCAA* and in s. 67(3) of the *BIA* in clear and unmistakeable terms. The same is not true of the deemed trust created under the *ETA*. Although Parliament created a deemed trust in favour of the Crown to hold unremitted GST monies, and although it purports to maintain this trust notwithstanding any contrary federal or provincial legislation, it did not *confirm* the continued operation of the trust in either the *BIA* or the *CCAA*, reflecting Parliament's intention to allow the deemed trust to lapse with the commencement of insolvency proceedings.

Per Abella J (dissenting): Section 222(3) of the *ETA* gives priority during *CCAA* proceedings to the Crown's deemed trust in unremitted GST. This provision unequivocally defines its boundaries in the clearest possible terms and excludes only the *BIA* from its legislative grasp. The language used reflects a clear legislative intention that s. 222(3) would prevail if in conflict with any other law except the *BIA*. This is borne out by the fact that following the enactment of s. 222(3), amendments to the *CCAA* were introduced, and despite requests from various constituencies, s. 18.3(1) was not amended to make the priorities in the *CCAA* consistent with those in the *BIA*. This indicates a deliberate legislative choice to protect the deemed trust in s. 222(3) from the reach of s. 18.3(1) of the *CCAA.*

The application of other principles of interpretation reinforces this conclusion. An earlier, specific provision may be overruled by a subsequent general statute if the legislature indicates, through its language, an intention that the general provision prevails. Section 222(3) achieves this through the use of language stating that it prevails despite any law of Canada, of a province, or "any other law" *other than the BIA*. Section 18.3(1) of the *CCAA* is thereby rendered inoperative for purposes of s. 222(3). By operation of s. 44(f) of the *Interpretation Act*, the transformation of s. 18(3) into s. 37(1) after the enactment of s. 222(3) of the *ETA* has no effect on the interpretive queue, and s. 222(3) of the *ETA* remains the "later in time" provision. This means that the deemed trust provision in s. 222(3) of the *ETA* takes precedence over s. 18.3(1) during *CCAA* proceedings. While s. 11 gives a court discretion to make orders notwithstanding the *BIA* and the *Winding-up Act,* that discretion is not liberated from the operation of any other federal statute. Any exercise of discretion is therefore circumscribed by whatever limits are imposed by statutes *other* than the *BIA* and the *Winding-up Act*. That includes the *ETA*. The chambers judge in this case was, therefore, required to respect the priority regime set out in s. 222(3) of the *ETA*. Neither s. 18.3(1) nor s. 11 of the *CCAA* gave him the authority to ignore it. He could not, as a result, deny the Crown's request for payment of the GST funds during the *CCAA* proceedings.

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By Deschamps J.

Overruled: *Ottawa Senators Hockey Club Corp. (Re)* (2005), 73 O.R. (3d) 737; **distinguished:** *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862; **referred to**: *Reference re Companies' Creditors Arrangement Act*, [1934] S.C.R. 659; *Quebec (Revenue) v. Caisse populaire Desjardins de Montmagny*, 2009 SCC 49, [2009] 3 S.C.R. 286; *Deputy Minister of Revenue v. Rainville*, [1980] 1 S.C.R. 35; *Gauntlet Energy Corp., Re*, 2003 ABQB 894, 30 Alta. L.R. (4) 192; *Komunik Corp. (Arrangement relatif à)*, 2009 QCCS 6332 (CanLII), leave to appeal granted, 2010 QCCA 183 (CanLII); *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411; *First Vancouver Finance v. M.N.R.*, 2002 SCC 49, [2002] 2 S.C.R. 720; *Solid Resources Ltd., Re* (2002), 40 C.B.R. (4) 219; *Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587, 92 O.R. (3d) 513; *Dylex Ltd., Re* (1995), 31 C.B.R. (3d) 106; *Elan Corp. v. Comiskey (1990), 41 O.A.C. 282*; *Chef Ready Foods Ltd. v. Hongkong Bank of Can.* (1990), 51 B.C.L.R. (2d) 84; *Pacific National Lease Holding Corp, Re* (1992), 19 B.C.AC. 134; *Canadian Airlines Corp., Re*, 2000 ABQB 442, 84 Alta. L.R. (3d) 9; *Air Canada, Re* (2003), 42 C.B.R. (4) 173; *Air Canada, Re*, 2003 CanLII 49366; *Canadian Red Cross Society/Société Canadienne de la Croix Rouge, Re* (2000), 19 C.B.R. (4) 158; *Skydome Corp., Re* (1998), 16 C.B.R. (4) 118; *United Used Auto & Truck Parts Ltd., Re*, *2000 BCCA 146*, *135 B.C.A.C. 96*, aff'g (1999), 12 C.B.R. (4) 144; *Skeena Cellulose Inc., Re*, 2003 BCCA 344, 13 B.C.L.R. (4) 236; *Stelco Inc. (Re)* (2005), 75 O.R. (3d) 5; *Philip's Manufacturing Ltd., Re* (1992), 9 C.B.R. (3d) 25; *Ivaco Inc. (Re)* (2006), 83 O.R. (3d) 108.

By Fish J.

Referred to: *Ottawa Senators Hockey Club Corp. (Re)* (2005), 73 O.R. (3d) 737.

By Abella J. (dissenting)

Ottawa Senators Hockey Club Corp. (Re) (2005), 73 O.R. (3d) 737; *Tele-Mobile Co. v. Ontario*, 2008 SCC 12, [2008] 1 S.C.R. 305; *Doré v. Verdun (City)*, [1997] 2 S.C.R. 862; *Attorney General of Canada v. Public Service Staff Relations Board*, [1977] 2 F.C. 663.

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History and Disposition:

APPEAL from a judgment of the British Columbia Court of Appeal (Newbury, Tysoe and Smith JJ.A.), *2009 BCCA 205*, 98 B.C.L.R. (4) 242, *270 B.C.A.C. 167*, 454 W.A.C. 167, *[2009] 12 W.W.R. 684*, *[2009] G.S.T.C. 79*, *[2009] B.C.J. No. 918* (QL), *2009 CarswellBC 1195*, reversing a judgment of Brenner C.J.S.C., *2008 BCSC 1805*, *[2008] G.S.T.C. 221*, *[2008] B.C.J. No. 2611* (QL), 2008 CarswellBC 2895, dismissing a Crown application for payment of GST monies. Appeal allowed, Abella J. dissenting.

Counsel

Mary I.A. Buttery, *Owen J. James* and *Matthew J.G. Curtis*, for the appellant.

Gordon Bourgard, *David Jacyk* and *Michael J. Lema*, for the respondent.

The judgment of McLachlin C.J. and Binnie, LeBel, Deschamps, Charron, Rothstein and Cromwell JJ. was delivered by

DESCHAMPS J.

1 For the first time this Court is called upon to directly interpret the provisions of the *Companies' Creditors Arrangement Act*, *R.S.C. 1985, c. C-36* ("*CCAA*"). In that respect, two questions are raised. The first requires reconciliation of provisions of the *CCAA* and the *Excise Tax Act*, *R.S.C. 1985, c. E-15* ("*ETA*"), which lower courts

have held to be in conflict with one another. The second concerns the scope of a court's discretion when supervising reorganization. The relevant statutory provisions are reproduced in the Appendix. On the first question, having considered the evolution of Crown priorities in the context of insolvency and the wording of the various statutes creating Crown priorities, I conclude that it is the *CCAA* and not the *ETA* that provides the rule. On the second question, I conclude that the broad discretionary jurisdiction conferred on the supervising judge must be interpreted having regard to the remedial nature of the *CCAA* and insolvency legislation generally. Consequently, the court had the discretion to partially lift a stay of proceedings to allow the debtor to make an assignment under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"). I would allow the appeal.

1. Facts and Decisions of the Courts Below

2 Ted LeRoy Trucking Ltd. ("LeRoy Trucking") commenced proceedings under the *CCAA* in the Supreme Court of British Columbia on December 13, 2007, obtaining a stay of proceedings with a view to reorganizing its financial affairs. LeRoy Trucking sold certain redundant assets as authorized by the order.

3 Amongst the debts owed by LeRoy Trucking was an amount for Goods and Services Tax ("GST") collected but unremitted to the Crown. The *ETA* creates a deemed trust in favour of the Crown for amounts collected in respect of GST. The deemed trust extends to any property or proceeds held by the person collecting GST and any property of that person held by a secured creditor, requiring that property to be paid to the Crown in priority to all security interests. The *ETA* provides that the deemed trust operates despite any other enactment of Canada except the *BIA*. However, the *CCAA* also provides that subject to certain exceptions, none of which mentions GST, deemed trusts in favour of the Crown do not operate under the *CCAA*. Accordingly, under the *CCAA* the Crown ranks as an unsecured creditor in respect of GST. Nonetheless, at the time LeRoy Trucking commenced *CCAA* proceedings the leading line of jurisprudence held that the *ETA* took precedence over the *CCAA* such that the Crown enjoyed priority for GST claims under the *CCAA*, even though it would have lost that same priority under the *BIA*. The *CCAA* underwent substantial amendments in 2005 in which some of the provisions at issue in this appeal were renumbered and reformulated (S.C. 2005, c. 47). However, these amendments only came into force on September 18, 2009. I will refer to the amended provisions only where relevant.

4 On April 29, 2008, Brenner C.J.S.C., in the context of the *CCAA* proceedings, approved a payment not exceeding $5 million, the proceeds of redundant asset sales, to Century Services, the debtor's major secured creditor. LeRoy Trucking proposed to hold back an amount equal to the GST monies collected but unremitted to the Crown and place it in the Monitor's trust account until the outcome of the reorganization was known. In order to maintain the *status quo* while the success of the reorganization was uncertain, Brenner C.J.S.C. agreed to the proposal and ordered that an amount of $305,202.30 be held by the Monitor in its trust account.

5 On September 3, 2008, having concluded that reorganization was not possible, LeRoy Trucking sought leave to make an assignment in bankruptcy under the *BIA*. The Crown sought an order that the GST monies held by the Monitor be paid to the Receiver General of Canada. Brenner C.J.S.C. dismissed the latter application. Reasoning that the purpose of segregating the funds with the Monitor was "to facilitate an ultimate payment of the GST monies which were owed pre-filing, but only if a viable plan emerged", the failure of such a reorganization, followed by an assignment in bankruptcy, meant the Crown would lose priority under the *BIA* (2008 BCSC 1805, [2008] G.S.T.C. 221).

6 The Crown's appeal was allowed by the British Columbia Court of Appeal (2009 BCCA 205, 270 B.C.A.C. 167). Tysoe J.A. for a unanimous court found two independent bases for allowing the Crown's appeal.

7 First, the court's authority under s. 11 of the *CCAA* was held not to extend to staying the Crown's application for immediate payment of the GST funds subject to the deemed trust after it was clear that reorganization efforts had failed and that bankruptcy was inevitable. As restructuring was no longer a possibility, staying the Crown's claim to the GST funds no longer served a purpose under the *CCAA* and the court was bound under the priority scheme provided by the *ETA* to allow payment to the Crown. In so holding, Tysoe J.A. adopted the reasoning in *Ottawa*

Senators Hockey Club Corp. (Re) (2005), 73 O.R. (3d) 737 (C.A.), which found that the *ETA* deemed trust for GST established Crown priority over secured creditors under the *CCAA*.

8 Second, Tysoe J.A. concluded that by ordering the GST funds segregated in the Monitor's trust account on April 29, 2008, the judge had created an express trust in favour of the Crown from which the monies in question could not be diverted for any other purposes. The Court of Appeal therefore ordered that the money held by the Monitor in trust be paid to the Receiver General.

2. Issues

9 This appeal raises three broad issues which are addressed in turn:

(1) Did s. 222(3) of the *ETA* displace s. 18.3(1) of the *CCAA* and give priority to the Crown's *ETA* deemed trust during *CCAA* proceedings as held in *Ottawa Senators*?

(2) Did the court exceed its *CCAA* authority by lifting the stay to allow the debtor to make an assignment in bankruptcy?

(3) Did the court's order of April 29, 2008 requiring segregation of the Crown's GST claim in the Monitor's trust account create an express trust in favour of the Crown in respect of those funds?

3. Analysis

10 The first issue concerns Crown priorities in the context of insolvency. As will be seen, the *ETA* provides for a deemed trust in favour of the Crown in respect of GST owed by a debtor "[d]espite ... any other enactment of Canada (except the *Bankruptcy and Insolvency Act*)" (s. 222(3)), while the *CCAA* stated at the relevant time that "notwithstanding 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 [so] regarded" (s. 18.3(1)). It is difficult to imagine two statutory provisions more apparently in conflict. However, as is often the case, the apparent conflict can be resolved through interpretation.

11 In order to properly interpret the provisions, it is necessary to examine the history of the *CCAA*, its function amidst the body of insolvency legislation enacted by Parliament, and the principles that have been recognized in the jurisprudence. It will be seen that Crown priorities in the insolvency context have been significantly pared down. The resolution of the second issue is also rooted in the context of the *CCAA*, but its purpose and the manner in which it has been interpreted in the case law are also key. After examining the first two issues in this case, I will address Tysoe J.A.'s conclusion that an express trust in favour of the Crown was created by the court's order of April 29, 2008.

3.1 *Purpose and Scope of Insolvency Law*

12 Insolvency is the factual situation that arises when a debtor is unable to pay creditors (see generally, R. J. Wood, *Bankruptcy and Insolvency Law* (2009), at p. 16). Certain legal proceedings become available upon insolvency, which typically allow a debtor to obtain a court order staying its creditors' enforcement actions and attempt to obtain a binding compromise with creditors to adjust the payment conditions to something more realistic. Alternatively, the debtor's assets may be liquidated and debts paid from the proceeds according to statutory priority rules. The former is usually referred to as reorganization or restructuring while the latter is termed liquidation.

13 Canadian commercial insolvency law is not codified in one exhaustive statute. Instead, Parliament has enacted multiple insolvency statutes, the main one being the *BIA*. The *BIA* offers a self-contained legal regime providing for both reorganization and liquidation. Although bankruptcy legislation has a long history, the *BIA* itself is a fairly recent statute -- it was enacted in 1992. It is characterized by a rules-based approach to proceedings. The *BIA* is available to insolvent debtors owing $1000 or more, regardless of whether they are natural or legal persons. It contains mechanisms for debtors to make proposals to their creditors for the adjustment of debts. If a proposal fails,

the *BIA* contains a bridge to bankruptcy whereby the debtor's assets are liquidated and the proceeds paid to creditors in accordance with the statutory scheme of distribution.

14 Access to the *CCAA* is more restrictive. A debtor must be a company with liabilities in excess of $5 million. Unlike the *BIA*, the *CCAA* contains no provisions for liquidation of a debtor's assets if reorganization fails. There are three ways of exiting *CCAA* proceedings. The best outcome is achieved when the stay of proceedings provides the debtor with some breathing space during which solvency is restored and the *CCAA* process terminates without reorganization being needed. The second most desirable outcome occurs when the debtor's compromise or arrangement is accepted by its creditors and the reorganized company emerges from the *CCAA* proceedings as a going concern. Lastly, if the compromise or arrangement fails, either the company or its creditors usually seek to have the debtor's assets liquidated under the applicable provisions of the *BIA* or to place the debtor into receivership. As discussed in greater detail below, the key difference between the reorganization regimes under the *BIA* and the *CCAA* is that the latter offers a more flexible mechanism with greater judicial discretion, making it more responsive to complex reorganizations.

15 As I will discuss at greater length below, the purpose of the *CCAA* -- Canada's first reorganization statute -- is to permit the debtor to continue to carry on business and, where possible, avoid the social and economic costs of liquidating its assets. Proposals to creditors under the *BIA* serve the same remedial purpose, though this is achieved through a rules-based mechanism that offers less flexibility. Where reorganization is impossible, the *BIA* may be employed to provide an orderly mechanism for the distribution of a debtor's assets to satisfy creditor claims according to predetermined priority rules.

16 Prior to the enactment of the *CCAA* in 1933 (S.C. 1932-33, c. 36), practice under existing commercial insolvency legislation tended heavily towards the liquidation of a debtor company (J. Sarra, *Creditor Rights and the Public Interest: Restructuring Insolvent Corporations* (2003), at p. 12). The battering visited upon Canadian businesses by the Great Depression and the absence of an effective mechanism for reaching a compromise between debtors and creditors to avoid liquidation required a legislative response. The *CCAA* was innovative as it allowed the insolvent debtor to attempt reorganization under judicial supervision outside the existing insolvency legislation which, once engaged, almost invariably resulted in liquidation (*Reference re Companies' Creditors Arrangement Act*, *[1934] S.C.R. 659*, at pp. 660-61; Sarra, *Creditor Rights*, at pp. 12-13).

17 Parliament understood when adopting the *CCAA* that liquidation of an insolvent company was harmful for most of those it affected -- notably creditors and employees -- and that a workout which allowed the company to survive was optimal (Sarra, *Creditor Rights*, at pp. 13-15).

18 Early commentary and jurisprudence also endorsed the *CCAA*'s remedial objectives. It recognized that companies retain more value as going concerns while underscoring that intangible losses, such as the evaporation of the companies' goodwill, result from liquidation (S. E. Edwards, "Reorganizations Under the Companies' Creditors Arrangement Act" (1947), 25 *Can. Bar Rev.* 587, at p. 592). Reorganization serves the public interest by facilitating the survival of companies supplying goods or services crucial to the health of the economy or saving large numbers of jobs (*ibid.*, at p. 593). Insolvency could be so widely felt as to impact stakeholders other than creditors and employees. Variants of these views resonate today, with reorganization justified in terms of rehabilitating companies that are key elements in a complex web of interdependent economic relationships in order to avoid the negative consequences of liquidation.

19 The *CCAA* fell into disuse during the next several decades, likely because amendments to the Act in 1953 restricted its use to companies issuing bonds (S.C. 1952-53, c. 3). During the economic downturn of the early 1980s, insolvency lawyers and courts adapting to the resulting wave of insolvencies resurrected the statute and deployed it in response to new economic challenges. Participants in insolvency proceedings grew to recognize and appreciate the statute's distinguishing feature: a grant of broad and flexible authority to the supervising court to make the orders necessary to facilitate the reorganization of the debtor and achieve the *CCAA*'s objectives. The manner in which courts have used *CCAA* jurisdiction in increasingly creative and flexible ways is explored in greater detail below.

20 Efforts to evolve insolvency law were not restricted to the courts during this period. In 1970, a government-commissioned panel produced an extensive study recommending sweeping reform but Parliament failed to act (see *Bankruptcy and Insolvency: Report of the Study Committee on Bankruptcy and Insolvency Legislation* (1970)). Another panel of experts produced more limited recommendations in 1986 which eventually resulted in enactment of the *Bankruptcy and Insolvency Act* of 1992 (S.C. 1992, c. 27) (see *Proposed Bankruptcy Act Amendments: Report of the Advisory Committee on Bankruptcy and Insolvency* (1986)). Broader provisions for reorganizing insolvent debtors were then included in Canada's bankruptcy statute. Although the 1970 and 1986 reports made no specific recommendations with respect to the *CCAA*, the House of Commons committee studying the *BIA*'s predecessor bill, C-22, seemed to accept expert testimony that the *BIA*'s new reorganization scheme would shortly supplant the *CCAA*, which could then be repealed, with commercial insolvency and bankruptcy being governed by a single statute (*Minutes of Proceedings and Evidence of the Standing Committee on Consumer and Corporate Affairs and Government Operations*, Issue No. 15, October 3, 1991, at pp. 15:15-15:16).

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

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

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

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

23 Another point of convergence of the *CCAA* and the *BIA* relates to priorities. Because the *CCAA* is silent about what happens if reorganization fails, the *BIA* scheme of liquidation and distribution necessarily supplies the backdrop for what will happen if a *CCAA* reorganization is ultimately unsuccessful. In addition, one of the important features of legislative reform of both statutes since the enactment of the *BIA* in 1992 has been a cutback in Crown priorities (S.C. 1992, c. 27, s. 39; S.C. 1997, c. 12, ss. 73 and 125; S.C. 2000, c. 30, s. 148; S.C. 2005, c. 47, ss. 69 and 131; S.C. 2009, c. 33, ss. 25 and 29; see also *Quebec (Revenue) v. Caisse populaire Desjardins de Montmagny*, 2009 SCC 49, [2009] 3 S.C.R. 286; *Deputy Minister of Revenue v. Rainville*, [1980] 1 S.C.R. 35; *Proposed Bankruptcy Act Amendments: Report of the Advisory Committee on Bankruptcy and Insolvency* (1986)).

24 With parallel *CCAA* and *BIA* restructuring schemes now an accepted feature of the insolvency law landscape,

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

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

3.2 *GST Deemed Trust Under the CCAA*

26 The Court of Appeal proceeded on the basis that the *ETA* precluded the court from staying the Crown's enforcement of the GST deemed trust when partially lifting the stay to allow the debtor to enter bankruptcy. In so doing, it adopted the reasoning in a line of cases culminating in *Ottawa Senators*, which held that an *ETA* deemed trust remains enforceable during *CCAA* reorganization despite language in the *CCAA* that suggests otherwise.

27 The Crown relies heavily on the decision of the Ontario Court of Appeal in *Ottawa Senators* and argues that the later in time provision of the *ETA* creating the GST deemed trust trumps the provision of the *CCAA* purporting to nullify most statutory deemed trusts. The Court of Appeal in this case accepted this reasoning but not all provincial courts follow it (see, e.g., *Komunik Corp. (Arrangement relatif à)*, 2009 QCCS 6332 (CanLII), leave to appeal granted, 2010 QCCA 183 (CanLII)). Century Services relied, in its written submissions to this Court, on the argument that the court had authority under the *CCAA* to continue the stay against the Crown's claim for unremitted GST. In oral argument, the question of whether *Ottawa Senators* was correctly decided nonetheless arose. After the hearing, the parties were asked to make further written submissions on this point. As appears evident from the reasons of my colleague Abella J., this issue has become prominent before this Court. In those circumstances, this Court needs to determine the correctness of the reasoning in *Ottawa Senators*.

28 The policy backdrop to this question involves the Crown's priority as a creditor in insolvency situations which, as I mentioned above, has evolved considerably. Prior to the 1990s, Crown claims largely enjoyed priority in insolvency. This was widely seen as unsatisfactory as shown by both the 1970 and 1986 insolvency reform proposals, which recommended that Crown claims receive no preferential treatment. A closely related matter was whether the *CCAA* was binding at all upon the Crown. Amendments to the *CCAA* in 1997 confirmed that it did indeed bind the Crown (see *CCAA*, s. 21, as am. by S.C. 1997, c. 12, s. 126).

29 Claims of priority by the state in insolvency situations receive different treatment across jurisdictions worldwide. For example, in Germany and Australia, the state is given no priority at all, while the state enjoys wide priority in the United States and France (see B. K. Morgan, "Should the Sovereign be Paid First? A Comparative International Analysis of the Priority for Tax Claims in Bankruptcy" (2000), 74 *Am. Bank. L.J.* 461, at p. 500). Canada adopted a middle course through legislative reform of Crown priority initiated in 1992. The Crown retained priority for source deductions of income tax, Employment Insurance ("EI") and Canada Pension Plan ("CPP") premiums, but ranks as an ordinary unsecured creditor for most other claims.

30 Parliament has frequently enacted statutory mechanisms to secure Crown claims and permit their enforcement. The two most common are statutory deemed trusts and powers to garnish funds third parties owe the debtor (see F. L. Lamer, *Priority of Crown Claims in Insolvency* (loose-leaf), at s. 2).

31 With respect to GST collected, Parliament has enacted a deemed trust. The *ETA* states that every person who collects an amount on account of GST is deemed to hold that amount in trust for the Crown (s. 222(1)). The deemed trust extends to other property of the person collecting the tax equal in value to the amount deemed to be in trust if that amount has not been remitted in accordance with the *ETA*. The deemed trust also extends to property held by a secured creditor that, but for the security interest, would be property of the person collecting the tax (s. 222(3)).

32 Parliament has created similar deemed trusts using almost identical language in respect of source deductions of

income tax, EI premiums and CPP premiums (see s. 227(4) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) ("*ITA*"), ss. 86(2) and (2.1) of the *Employment Insurance Act*, S.C. 1996, c. 23, and ss. 23(3) and (4) of the *Canada Pension Plan*, R.S.C. 1985, c. C-8). I will refer to income tax, EI and CPP deductions as "source deductions".

33 In *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411, this Court addressed a priority dispute between a deemed trust for source deductions under the *ITA* and security interests taken under both the *Bank Act*, S.C. 1991, c. 46, and the Alberta *Personal Property Security Act*, S.A. 1988, c. P-4.05 ("*PPSA*"). As then worded, an *ITA* deemed trust over the debtor's property equivalent to the amount owing in respect of income tax became effective at the time of liquidation, receivership, or assignment in bankruptcy. *Sparrow Electric* held that the *ITA* deemed trust could not prevail over the security interests because, being fixed charges, the latter attached as soon as the debtor acquired rights in the property such that the *ITA* deemed trust had no property on which to attach when it subsequently arose. Later, in *First Vancouver Finance v. M.N.R.*, 2002 SCC 49, [2002] 2 S.C.R. 720, this Court observed that Parliament had legislated to strengthen the statutory deemed trust in the *ITA* by deeming it to operate from the moment the deductions were not paid to the Crown as required by the *ITA*, and by granting the Crown priority over all security interests (paras. 27-29) (the "*Sparrow Electric* amendment").

34 The amended text of s. 227(4.1) of the *ITA* and concordant source deductions deemed trusts in the *Canada Pension Plan* and the *Employment Insurance Act* state that the deemed trust operates notwithstanding any other enactment of Canada, except ss. 81.1 and 81.2 of the *BIA*. The *ETA* deemed trust at issue in this case is similarly worded, but it excepts the *BIA* in its entirety. The provision reads as follows:

> **222...** .
>
> ...
>
> (3) Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and Insolvency Act*), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed ... .

35 The Crown submits that the *Sparrow Electric* amendment, added by Parliament to the *ETA* in 2000, was intended to preserve the Crown's priority over collected GST under the *CCAA* while subordinating the Crown to the status of an unsecured creditor in respect of GST only under the *BIA*. This is because the *ETA* provides that the GST deemed trust is effective "despite" any other enactment except the *BIA*.

36 The language used in the *ETA* for the GST deemed trust creates an apparent conflict with the *CCAA*, which provides that subject to certain exceptions, property deemed by statute to be held in trust for the Crown shall not be so regarded.

37 Through a 1997 amendment to the *CCAA* (S.C. 1997, c. 12, s. 125), Parliament appears to have, subject to specific exceptions, nullified deemed trusts in favour of the Crown once reorganization proceedings are commenced under the Act. The relevant provision reads:

> **18.3** (1) Subject to subsection (2), notwithstanding 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 held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

This nullification of deemed trusts was continued in further amendments to the *CCAA* (S.C. 2005, c. 47), where s. 18.3(1) was renumbered and reformulated as s. 37(1):

> **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.

38 An analogous provision exists in the *BIA*, which, subject to the same specific exceptions, nullifies statutory deemed trusts and makes property of the bankrupt that would otherwise be subject to a deemed trust part of the debtor's estate and available to creditors (S.C. 1992, c. 27, s. 39; S.C. 1997, c. 12, s. 73; *BIA*, s. 67(2)). It is noteworthy that in both the *CCAA* and the *BIA*, the exceptions concern source deductions (*CCAA*, s. 18.3(2); *BIA*, s. 67(3)). The relevant provision of the *CCAA* reads:

> **18.3** ...
>
> (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*... .

Thus, the Crown's deemed trust and corresponding priority in source deductions remain effective both in reorganization and in bankruptcy.

39 Meanwhile, in both s. 18.4(1) of the *CCAA* and s. 86(1) of the *BIA*, other Crown claims are treated as unsecured. These provisions, establishing the Crown's status as an unsecured creditor, explicitly exempt statutory deemed trusts in source deductions (*CCAA*, s. 18.4(3); *BIA*, s. 86(3)). The *CCAA* provision reads as follows:

> **18.4** ...
>
> ...
>
> (3) Subsection (1) [Crown ranking as unsecured creditor] does not affect the operation of
>
> (*a*) subsections 224(1.2) and (1.3) of the *Income Tax Act*,
>
> (*b*) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution ... .

Therefore, not only does the *CCAA* provide that Crown claims do not enjoy priority over the claims of other creditors (s. 18.3(1)), but the exceptions to this rule (i.e., that Crown priority is maintained for source deductions) are repeatedly stated in the statute.

40 The apparent conflict in this case is whether the rule in the *CCAA* first enacted as s. 18.3 in 1997, which provides that subject to certain explicit exceptions, statutory deemed trusts are ineffective under the *CCAA*, is overridden by the one in the *ETA* enacted in 2000 stating that GST deemed trusts operate despite any enactment of Canada except the *BIA*. With respect for my colleague Fish J., I do not think the apparent conflict can be resolved by denying it and creating a rule requiring both a statutory provision enacting the deemed trust, and a second statutory provision confirming it. Such a rule is unknown to the law. Courts must recognize conflicts, apparent or real, and resolve them when possible.

41 A line of jurisprudence across Canada has resolved the apparent conflict in favour of the *ETA*, thereby maintaining GST deemed trusts under the *CCAA*. *Ottawa Senators*, the leading case, decided the matter by invoking the doctrine of implied repeal to hold that the later in time provision of the *ETA* should take precedence over the *CCAA* (see also *Solid Resources Ltd., Re* *(2002), 40 C.B.R. (4th) 219* (Alta. Q.B.); *Gauntlet*).

42 The Ontario Court of Appeal in *Ottawa Senator* s rested its conclusion on two considerations. First, it was persuaded that by explicitly mentioning the *BIA* in *ETA* s. 222(3), but not the *CCAA*, Parliament made a deliberate

choice. In the words of MacPherson J.A.:

> The *BIA* and the *CCAA* are closely related federal statutes. I cannot conceive that Parliament would specifically identify the *BIA* as an exception, but accidentally fail to consider the *CCAA* as a possible second exception. In my view, the omission of the *CCAA* from s. 222(3) of the *ETA* was almost certainly a considered omission. [para. 43]

43 Second, the Ontario Court of Appeal compared the conflict between the *ETA* and the *CCAA* to that before this Court in *Doré v. Verdun (City)*, *[1997] 2 S.C.R. 862*, and found them to be "identical" (para. 46). It therefore considered *Doré* binding (para. 49). In *Doré*, a limitations provision in the more general and recently enacted *Civil Code of Québec*, S.Q. 1991, c. 64 ("*C.C.Q.*"), was held to have repealed a more specific provision of the earlier Quebec *Cities and Towns Act*, R.S.Q., c. C-19, with which it conflicted. By analogy, the Ontario Court of Appeal held that the later in time and more general provision, s. 222(3) of the *ETA*, impliedly repealed the more specific and earlier in time provision, s. 18.3(1) of the *CCAA* (paras. 47-49).

44 Viewing this issue in its entire context, several considerations lead me to conclude that neither the reasoning nor the result in *Ottawa Senators* can stand. While a conflict may exist at the level of the statutes' wording, a purposive and contextual analysis to determine Parliament's true intent yields the conclusion that Parliament could not have intended to restore the Crown's deemed trust priority in GST claims under the *CCAA* when it amended the *ETA* in 2000 with the *Sparrow Electric* amendment.

45 I begin by recalling that Parliament has shown its willingness to move away from asserting priority for Crown claims in insolvency law. Section 18.3(1) of the *CCAA* (subject to the s. 18.3(2) exceptions) provides that the Crown's deemed trusts have no effect under the *CCAA*. Where Parliament has sought to protect certain Crown claims through statutory deemed trusts and intended that these deemed trusts continue in insolvency, it has legislated so explicitly and elaborately. For example, s. 18.3(2) of the *CCAA* and s. 67(3) of the *BIA* expressly provide that deemed trusts for source deductions remain effective in insolvency. Parliament has, therefore, clearly carved out exceptions from the general rule that deemed trusts are ineffective in insolvency. The *CCAA* and *BIA* are in harmony, preserving deemed trusts and asserting Crown priority only in respect of source deductions. Meanwhile, there is no express statutory basis for concluding that GST claims enjoy a preferred treatment under the *CCAA* or the *BIA*. Unlike source deductions, which are clearly and expressly dealt with under both these insolvency statutes, no such clear and express language exists in those Acts carving out an exception for GST claims.

46 The internal logic of the *CCAA* also militates against upholding the *ETA* deemed trust for GST. The *CCAA* imposes limits on a suspension by the court of the Crown's rights in respect of source deductions but does not mention the *ETA* (s. 11.4). Since source deductions deemed trusts are granted explicit protection under the *CCAA*, it would be inconsistent to afford a better protection to the *ETA* deemed trust absent explicit language in the *CCAA*. Thus, the logic of the *CCAA* appears to subject the *ETA* deemed trust to the waiver by Parliament of its priority (s. 18.4).

47 Moreover, a strange asymmetry would arise if the interpretation giving the *ETA* priority over the *CCAA* urged by the Crown is adopted here: the Crown would retain priority over GST claims during *CCAA* proceedings but not in bankruptcy. As courts have reflected, this can only encourage statute shopping by secured creditors in cases such as this one where the debtor's assets cannot satisfy both the secured creditors' and the Crown's claims (*Gauntlet*, at para. 21). If creditors' claims were better protected by liquidation under the *BIA*, creditors' incentives would lie overwhelmingly with avoiding proceedings under the *CCAA* and not risking a failed reorganization. Giving a key player in any insolvency such skewed incentives against reorganizing under the *CCAA* can only undermine that statute's remedial objectives and risk inviting the very social ills that it was enacted to avert.

48 Arguably, the effect of *Ottawa Senators* is mitigated if restructuring is attempted under the *BIA* instead of the *CCAA*, but it is not cured. If *Ottawa Senators* were to be followed, Crown priority over GST would differ depending on whether restructuring took place under the *CCAA* or the *BIA*. The anomaly of this result is made manifest by the

fact that it would deprive companies of the option to restructure under the more flexible and responsive *CCAA* regime, which has been the statute of choice for complex reorganizations.

49 Evidence that Parliament intended different treatments for GST claims in reorganization and bankruptcy is scant, if it exists at all. Section 222(3) of the *ETA* was enacted as part of a wide-ranging budget implementation bill in 2000. The summary accompanying that bill does not indicate that Parliament intended to elevate Crown priority over GST claims under the *CCAA* to the same or a higher level than source deductions claims. Indeed, the summary for deemed trusts states only that amendments to existing provisions are aimed at "ensuring that employment insurance premiums and Canada Pension Plan contributions that are required to be remitted by an employer are fully recoverable by the Crown in the case of the bankruptcy of the employer" (Summary to S.C. 2000, c. 30, at p. 4a). The wording of GST deemed trusts resembles that of statutory deemed trusts for source deductions and incorporates the same overriding language and reference to the *BIA*. However, as noted above, Parliament's express intent is that only source deductions deemed trusts remain operative. An exception for the *BIA* in the statutory language establishing the source deductions deemed trusts accomplishes very little, because the explicit language of the *BIA* itself (and the *CCAA*) carves out these source deductions deemed trusts and maintains their effect. It is however noteworthy that no equivalent language maintaining GST deemed trusts exists under either the *BIA* or the *CCAA*.

50 It seems more likely that by adopting the same language for creating GST deemed trusts in the *ETA* as it did for deemed trusts for source deductions, and by overlooking the inclusion of an exception for the *CCAA* alongside the *BIA* in s. 222(3) of the *ETA*, Parliament may have inadvertently succumbed to a drafting anomaly. Because of a statutory lacuna in the *ETA*, the GST deemed trust could be seen as remaining effective in the *CCAA*, while ceasing to have any effect under the *BIA*, thus creating an apparent conflict with the wording of the *CCAA*. However, it should be seen for what it is: a facial conflict only, capable of resolution by looking at the broader approach taken to Crown priorities and by giving precedence to the statutory language of s. 18.3 of the *CCAA* in a manner that does not produce an anomalous outcome.

51 Section 222(3) of the *ETA* evinces no explicit intention of Parliament to repeal *CCAA* s. 18.3. It merely creates an apparent conflict that must be resolved by statutory interpretation. Parliament's intent when it enacted *ETA* s. 222(3) was therefore far from unambiguous. Had it sought to give the Crown a priority for GST claims, it could have done so explicitly as it did for source deductions. Instead, one is left to infer from the language of *ETA* s. 222(3) that the GST deemed trust was intended to be effective under the *CCAA*.

52 I am not persuaded that the reasoning in *Doré* requires the application of the doctrine of implied repeal in the circumstances of this case. The main issue in *Doré* concerned the impact of the adoption of the *C.C.Q.* on the administrative law rules with respect to municipalities. While Gonthier J. concluded in that case that the limitation provision in art. 2930 *C.C.Q.* had repealed by implication a limitation provision in the *Cities and Towns Act*, he did so on the basis of more than a textual analysis. The conclusion in *Doré* was reached after thorough contextual analysis of both pieces of legislation, including an extensive review of the relevant legislative history (paras. 31-41). Consequently, the circumstances before this Court in *Doré* are far from "identical" to those in the present case, in terms of text, context and legislative history. Accordingly, *Doré* cannot be said to require the automatic application of the rule of repeal by implication.

53 A noteworthy indicator of Parliament's overall intent is the fact that in subsequent amendments it has not displaced the rule set out in the *CCAA*. Indeed, as indicated above, the recent amendments to the *CCAA* in 2005 resulted in the rule previously found in s. 18.3 being renumbered and reformulated as s. 37. Thus, to the extent the interpretation allowing the GST deemed trust to remain effective under the *CCAA* depends on *ETA* s. 222(3) having impliedly repealed *CCAA* s. 18.3(1) because it is later in time, we have come full circle. Parliament has renumbered and reformulated the provision of the *CCAA* stating that, subject to exceptions for source deductions, deemed trusts do not survive the *CCAA* proceedings and thus the *CCAA* is now the later in time statute. This confirms that Parliament's intent with respect to GST deemed trusts is to be found in the *CCAA*.

54 I do not agree with my colleague Abella J. that s. 44(*f*) of the *Interpretation Act*, R.S.C. 1985, c. I-21, can be

used to interpret the 2005 amendments as having no effect. The new statute can hardly be said to be a mere re-enactment of the former statute. Indeed, the *CCAA* underwent a substantial review in 2005. Notably, acting consistently with its goal of treating both the *BIA* and the *CCAA* as sharing the same approach to insolvency, Parliament made parallel amendments to both statutes with respect to corporate proposals. In addition, new provisions were introduced regarding the treatment of contracts, collective agreements, interim financing and governance agreements. The appointment and role of the Monitor was also clarified. Noteworthy are the limits imposed by *CCAA* s. 11.09 on the court's discretion to make an order staying the Crown's source deductions deemed trusts, which were formerly found in s. 11.4. No mention whatsoever is made of GST deemed trusts (see Summary to S.C. 2005, c. 47). The review went as far as looking at the very expression used to describe the statutory override of deemed trusts. The comments cited by my colleague only emphasize the clear intent of Parliament to maintain its policy that only source deductions deemed trusts survive in *CCAA* proceedings.

55 In the case at bar, the legislative context informs the determination of Parliament's legislative intent and supports the conclusion that *ETA* s. 222(3) was not intended to narrow the scope of the *CCAA*'s override provision. Viewed in its entire context, the conflict between the *ETA* and the *CCAA* is more apparent than real. I would therefore not follow the reasoning in *Ottawa Senators* and affirm that *CCAA* s. 18.3 remained effective.

56 My conclusion is reinforced by the purpose of the *CCAA* as part of Canadian remedial insolvency legislation. As this aspect is particularly relevant to the second issue, I will now discuss how courts have interpreted the scope of their discretionary powers in supervising a *CCAA* reorganization and how Parliament has largely endorsed this interpretation. Indeed, the interpretation courts have given to the *CCAA* helps in understanding how the *CCAA* grew to occupy such a prominent role in Canadian insolvency law.

3.3 *Discretionary Power of a Court Supervising a CCAA Reorganization*

57 Courts frequently observe that "[t]he *CCAA* is skeletal in nature" and does not "contain a comprehensive code that lays out all that is permitted or barred" (*Metcalfe & Mansfield Alternative Investments II Corp. (Re)*, 2008 ONCA 587, 92 O.R. (3d) 513, at para. 44, *per* Blair J.A.). Accordingly, "[t]he history of CCAA law has been an evolution of judicial interpretation" (*Dylex Ltd., Re* (1995), 31 C.B.R. (3d) 106 (Ont. Ct. (Gen. Div.)), at para. 10, *per* Farley J.).

58 *CCAA* decisions are often based on discretionary grants of jurisdiction. The incremental exercise of judicial discretion in commercial courts under conditions one practitioner aptly describes as "the hothouse of real-time litigation" has been the primary method by which the *CCAA* has been adapted and has evolved to meet contemporary business and social needs (see Jones, at p. 484).

59 Judicial discretion must of course be exercised in furtherance of the *CCAA*'s purposes. The remedial purpose I referred to in the historical overview of the Act is recognized over and over again in the jurisprudence. To cite one early example:

> The legislation is remedial in the purest sense in that it provides a means whereby the devastating social and economic effects of bankruptcy or creditor initiated termination of ongoing business operations can be avoided while a court-supervised attempt to reorganize the financial affairs of the debtor company is made.
>
> (*Elan Corp. v. Comiskey* (1990), 41 O.A.C. 282
>
> , at para. 57, *per* Doherty J.A., dissenting)

60 Judicial decision making under the *CCAA* takes many forms. A court must first of all provide the conditions under which the debtor can attempt to reorganize. This can be achieved by staying enforcement actions by creditors to allow the debtor's business to continue, preserving the *status quo* while the debtor plans the compromise or arrangement to be presented to creditors, and supervising the process and advancing it to the point where it can be determined whether it will succeed (see, e.g., *Chef Ready Foods Ltd. v. Hongkong Bank of Can.* (1990), 51 B.C.L.R. (2d) 84 (C.A.), at pp. 88-89; *Pacific National Lease Holding Corp., Re* (1992), 19 B.C.A.C. 134,

at para. 27). In doing so, the court must often be cognizant of the various interests at stake in the reorganization, which can extend beyond those of the debtor and creditors to include employees, directors, shareholders, and even other parties doing business with the insolvent company (see, e.g., *Canadian Airlines Corp., Re*, 2000 ABQB 442, 84 Alta. L.R. (3d) 9, at para. 144, *per* Paperny J. (as she then was); *Air Canada, Re* (2003), 42 C.B.R. (4th) 173 (Ont. S.C.J.), at para. 3; *Air Canada, Re*, 2003 CanLII 49366 (Ont. S.C.J.), at para. 13, *per* Farley J.; Sarra, *Creditor Rights*, at pp. 181-92 and 217-26). In addition, courts must recognize that on occasion the broader public interest will be engaged by aspects of the reorganization and may be a factor against which the decision of whether to allow a particular action will be weighed (see, e.g., *Canadian Red Cross Society/Société Canadienne de la Croix Rouge, Re* (2000), 19 C.B.R. (4th) 158 (Ont. S.C.J.), at para. 2, *per* Blair J. (as he then was); Sarra, *Creditor Rights*, at pp. 195-214).

61 When large companies encounter difficulty, reorganizations become increasingly complex. *CCAA* courts have been called upon to innovate accordingly in exercising their jurisdiction beyond merely staying proceedings against the debtor to allow breathing room for reorganization. They have been asked to sanction measures for which there is no explicit authority in the *CCAA*. Without exhaustively cataloguing the various measures taken under the authority of the *CCAA*, it is useful to refer briefly to a few examples to illustrate the flexibility the statute affords supervising courts.

62 Perhaps the most creative use of *CCAA* authority has been the increasing willingness of courts to authorize post-filing security for debtor in possession financing or super-priority charges on the debtor's assets when necessary for the continuation of the debtor's business during the reorganization (see, e.g., *Skydome Corp., Re* (1998), 16 C.B.R. (4th) 118 (Ont. Ct. (Gen. Div.)); *United Used Auto & Truck Parts Ltd., Re*, *2000 BCCA 146*, *135 B.C.A.C. 96*, aff'g (1999), 12 C.B.R. (4th) 144 (S.C.); and generally, J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2007), at pp. 93-115). The *CCAA* has also been used to release claims against third parties as part of approving a comprehensive plan of arrangement and compromise, even over the objections of some dissenting creditors (see *Metcalfe & Mansfield*). As well, the appointment of a Monitor to oversee the reorganization was originally a measure taken pursuant to the *CCAA*'s supervisory authority; Parliament responded, making the mechanism mandatory by legislative amendment.

63 Judicial innovation during *CCAA* proceedings has not been without controversy. At least two questions it raises are directly relevant to the case at bar: (1) what are the sources of a court's authority during *CCAA* proceedings? (2) what are the limits of this authority?

64 The first question concerns the boundary between a court's statutory authority under the *CCAA* and a court's residual authority under its inherent and equitable jurisdiction when supervising a reorganization. In authorizing measures during *CCAA* proceedings, courts have on occasion purported to rely upon their equitable jurisdiction to advance the purposes of the Act or their inherent jurisdiction to fill gaps in the statute. Recent appellate decisions have counselled against purporting to rely on inherent jurisdiction, holding that the better view is that courts are in most cases simply construing the authority supplied by the *CCAA* itself (see, e.g., *Skeena Cellulose Inc., Re*, 2003 BCCA 344, 13 B.C.L.R. (4th) 236, at paras. 45-47, *per* Newbury J.A.; *Stelco Inc. (Re)* (2005), 75 O.R. (3d) 5 (C.A.), paras. 31-33, *per* Blair J.A.).

65 I agree with Justice Georgina R. Jackson and Professor Janis Sarra that the most appropriate approach is a hierarchical one in which courts rely first on an interpretation of the provisions of the *CCAA* text before turning to inherent or equitable jurisdiction to anchor measures taken in a *CCAA* proceeding (see G. R. Jackson and J. Sarra, "Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters", in J. P. Sarra, ed., *Annual Review of Insolvency Law 2007* (2008), 41, at p. 42). The authors conclude that when given an appropriately purposive and liberal interpretation, the *CCAA* will be sufficient in most instances to ground measures necessary to achieve its objectives (p. 94).

66 Having examined the pertinent parts of the *CCAA* and the recent history of the legislation, I accept that in most instances the issuance of an order during *CCAA* proceedings should be considered an exercise in statutory

interpretation. Particularly noteworthy in this regard is the expansive interpretation the language of the statute at issue is capable of supporting.

67 The initial grant of authority under the *CCAA* empowered a court "where an application is made under this Act in respect of a company ... on the application of any person interested in the matter ..., subject to this Act, [to] make an order under this section" (*CCAA*, s. 11(1)). The plain language of the statute was very broad.

68 In this regard, though not strictly applicable to the case at bar, I note that Parliament has in recent amendments changed the wording contained in s. 11(1), making explicit the discretionary authority of the court under the *CCAA*. Thus in s. 11 of the *CCAA* as currently enacted, a court may, "subject to the restrictions set out in this Act, ... make any order that it considers appropriate in the circumstances" (S.C. 2005, c. 47, s. 128). Parliament appears to have endorsed the broad reading of *CCAA* authority developed by the jurisprudence.

69 The *CCAA* also explicitly provides for certain orders. Both an order made on an initial application and an order on subsequent applications may stay, restrain, or prohibit existing or new proceedings against the debtor. The burden is on the applicant to satisfy the court that the order is appropriate in the circumstances and that the applicant has been acting in good faith and with due diligence (*CCAA*, ss. 11(3), (4) and (6)).

70 The general language of the *CCAA* should not be read as being restricted by the availability of more specific orders. However, the requirements of appropriateness, good faith, and due diligence are baseline considerations that a court should always bear in mind when exercising *CCAA* authority. Appropriateness under the *CCAA* is assessed by inquiring whether the order sought advances the policy objectives underlying the *CCAA*. The question is whether the order will usefully further efforts to achieve the remedial purpose of the *CCAA* -- avoiding the social and economic losses resulting from liquidation of an insolvent company. I would add that appropriateness extends not only to the purpose of the order, but also to the means it employs. Courts should be mindful that chances for successful reorganizations are enhanced where participants achieve common ground and all stakeholders are treated as advantageously and fairly as the circumstances permit.

71 It is well-established that efforts to reorganize under the *CCAA* can be terminated and the stay of proceedings against the debtor lifted if the reorganization is "doomed to failure" (see *Chef Ready*, at p. 88; *Philip's Manufacturing Ltd., Re* *(1992), 9 C.B.R. (3d) 25* (B.C.C.A.), at paras. 6-7). However, when an order is sought that does realistically advance the *CCAA*'s purposes, the ability to make it is within the discretion of a *CCAA* court.

72 The preceding discussion assists in determining whether the court had authority under the *CCAA* to continue the stay of proceedings against the Crown once it was apparent that reorganization would fail and bankruptcy was the inevitable next step.

73 In the Court of Appeal, Tysoe J.A. held that no authority existed under the *CCAA* to continue staying the Crown's enforcement of the GST deemed trust once efforts at reorganization had come to an end. The appellant submits that in so holding, Tysoe J.A. failed to consider the underlying purpose of the *CCAA* and give the statute an appropriately purposive and liberal interpretation under which the order was permissible. The Crown submits that Tysoe J.A. correctly held that the mandatory language of the *ETA* gave the court no option but to permit enforcement of the GST deemed trust when lifting the *CCAA* stay to permit the debtor to make an assignment under the *BIA*. Whether the *ETA* has a mandatory effect in the context of a *CCAA* proceeding has already been discussed. I will now address the question of whether the order was authorized by the *CCAA*.

74 It is beyond dispute that the *CCAA* imposes no explicit temporal limitations upon proceedings commenced under the Act that would prohibit ordering a continuation of the stay of the Crown's GST claims while lifting the general stay of proceedings temporarily to allow the debtor to make an assignment in bankruptcy.

75 The question remains whether the order advanced the underlying purpose of the *CCAA*. The Court of Appeal held that it did not because the reorganization efforts had come to an end and the *CCAA* was accordingly spent. I disagree.

76 There is no doubt that had reorganization been commenced under the *BIA* instead of the *CCAA*, the Crown's deemed trust priority for the GST funds would have been lost. Similarly, the Crown does not dispute that under the scheme of distribution in bankruptcy under the *BIA*, the deemed trust for GST ceases to have effect. Thus, after reorganization under the *CCAA* failed, creditors would have had a strong incentive to seek immediate bankruptcy and distribution of the debtor's assets under the *BIA*. In order to conclude that the discretion does not extend to partially lifting the stay in order to allow for an assignment in bankruptcy, one would have to assume a gap between the *CCAA* and the *BIA* proceedings. Brenner C.J.S.C.'s order staying Crown enforcement of the GST claim ensured that creditors would not be disadvantaged by the attempted reorganization under the *CCAA*. The effect of his order was to blunt any impulse of creditors to interfere in an orderly liquidation. His order was thus in furtherance of the *CCAA*'s objectives to the extent that it allowed a bridge between the *CCAA* and *BIA* proceedings. This interpretation of the tribunal's discretionary power is buttressed by s. 20 of the *CCAA*. That section provides that the *CCAA* "may be applied together with the provisions of any Act of Parliament ... that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them", such as the *BIA*. Section 20 clearly indicates the intention of Parliament for the *CCAA* to operate *in tandem* with other insolvency legislation, such as the *BIA*.

77 The *CCAA* creates conditions for preserving the *status quo* while attempts are made to find common ground amongst stakeholders for a reorganization that is fair to all. Because the alternative to reorganization is often bankruptcy, participants will measure the impact of a reorganization against the position they would enjoy in liquidation. In the case at bar, the order fostered a harmonious transition between reorganization and liquidation while meeting the objective of a single collective proceeding that is common to both statutes.

78 Tysoe J.A. therefore erred in my view by treating the *CCAA* and the *BIA* as distinct regimes subject to a temporal gap between the two, rather than as forming part of an integrated body of insolvency law. Parliament's decision to maintain two statutory schemes for reorganization, the *BIA* and the *CCAA*, reflects the reality that reorganizations of differing complexity require different legal mechanisms. By contrast, only one statutory scheme has been found to be needed to liquidate a bankrupt debtor's estate. The transition from the *CCAA* to the *BIA* may require the partial lifting of a stay of proceedings under the *CCAA* to allow commencement of the *BIA* proceedings. However, as Laskin J.A. for the Ontario Court of Appeal noted in a similar competition between secured creditors and the Ontario Superintendent of Financial Services seeking to enforce a deemed trust, "[t]he two statutes are related" and no "gap" exists between the two statutes which would allow the enforcement of property interests at the conclusion of *CCAA* proceedings that would be lost in bankruptcy (*Ivaco Inc. (Re)* *(2006), 83 O.R. (3d) 108*, at paras. 62-63).

79 The Crown's priority in claims pursuant to source deductions deemed trusts does not undermine this conclusion. Source deductions deemed trusts survive under both the *CCAA* and the *BIA*. Accordingly, creditors' incentives to prefer one Act over another will not be affected. While a court has a broad discretion to stay source deductions deemed trusts in the *CCAA* context, this discretion is nevertheless subject to specific limitations applicable only to source deductions deemed trusts (*CCAA*, s. 11.4). Thus, if *CCAA* reorganization fails (e.g., either the creditors or the court refuse a proposed reorganization), the Crown can immediately assert its claim in unremitted source deductions. But this should not be understood to affect a seamless transition into bankruptcy or create any "gap" between the *CCAA* and the *BIA* for the simple reason that, regardless of what statute the reorganization had been commenced under, creditors' claims in both instances would have been subject to the priority of the Crown's source deductions deemed trust.

80 Source deductions deemed trusts aside, the comprehensive and exhaustive mechanism under the *BIA* must control the distribution of the debtor's assets once liquidation is inevitable. Indeed, an orderly transition to liquidation is mandatory under the *BIA* where a proposal is rejected by creditors. The *CCAA* is silent on the transition into liquidation but the breadth of the court's discretion under the Act is sufficient to construct a bridge to liquidation under the *BIA.* The court must do so in a manner that does not subvert the scheme of distribution under the *BIA*. Transition to liquidation requires partially lifting the *CCAA* stay to commence proceedings under the *BIA*. This

necessary partial lifting of the stay should not trigger a race to the courthouse in an effort to obtain priority unavailable under the *BIA*.

81 I therefore conclude that Brenner C.J.S.C. had the authority under the *CCAA* to lift the stay to allow entry into liquidation.

3.4 *Express Trust*

82 The last issue in this case is whether Brenner C.J.S.C. created an express trust in favour of the Crown when he ordered on April 29, 2008, that proceeds from the sale of LeRoy Trucking's assets equal to the amount of unremitted GST be held back in the Monitor's trust account until the results of the reorganization were known. Tysoe J.A. in the Court of Appeal concluded as an alternative ground for allowing the Crown's appeal that it was the beneficiary of an express trust. I disagree.

83 Creation of an express trust requires the presence of three certainties: intention, subject matter, and object. Express or "true trusts" arise from the acts and intentions of the settlor and are distinguishable from other trusts arising by operation of law (see D. W. M. Waters, M. R. Gillen and L. D. Smith, eds., *Waters' Law of Trusts in Canada* (3rd ed. 2005), at pp. 28-29 especially fn. 42).

84 Here, there is no certainty to the object (i.e. the beneficiary) inferrable from the court's order of April 29, 2008, sufficient to support an express trust.

85 At the time of the order, there was a dispute between Century Services and the Crown over part of the proceeds from the sale of the debtor's assets. The court's solution was to accept LeRoy Trucking's proposal to segregate those monies until that dispute could be resolved. Thus there was no certainty that the Crown would actually be the beneficiary, or object, of the trust.

86 The fact that the location chosen to segregate those monies was the Monitor's trust account has no independent effect such that it would overcome the lack of a clear beneficiary. In any event, under the interpretation of *CCAA* s. 18.3(1) established above, no such priority dispute would even arise because the Crown's deemed trust priority over GST claims would be lost under the *CCAA* and the Crown would rank as an unsecured creditor for this amount. However, Brenner C.J.S.C. may well have been proceeding on the basis that, in accordance with *Ottawa Senators*, the Crown's GST claim would remain effective if reorganization was successful, which would not be the case if transition to the liquidation process of the *BIA* was allowed. An amount equivalent to that claim would accordingly be set aside pending the outcome of reorganization.

87 Thus, uncertainty surrounding the outcome of the *CCAA* restructuring eliminates the existence of any certainty to permanently vest in the Crown a beneficial interest in the funds. That much is clear from the oral reasons of Brenner C.J.S.C. on April 29, 2008, when he said: "Given the fact that [*CCAA* proceedings] are known to fail and filings in bankruptcy result, it seems to me that maintaining the status quo in the case at bar supports the proposal to have the monitor hold these funds in trust." Exactly who might take the money in the final result was therefore evidently in doubt. Brenner C.J.S.C.'s subsequent order of September 3, 2008, denying the Crown's application to enforce the trust once it was clear that bankruptcy was inevitable, confirms the absence of a clear beneficiary required to ground an express trust.

4. Conclusion

88 I conclude that Brenner C.J.S.C. had the discretion under the *CCAA* to continue the stay of the Crown's claim for enforcement of the GST deemed trust while otherwise lifting it to permit LeRoy Trucking to make an assignment in bankruptcy. My conclusion that s. 18.3(1) of the *CCAA* nullified the GST deemed trust while proceedings under that Act were pending confirms that the discretionary jurisdiction under s. 11 utilized by the court was not limited by the Crown's asserted GST priority, because there is no such priority under the *CCAA*.

89 For these reasons, I would allow the appeal and declare that the $305,202.30 collected by LeRoy Trucking in respect of GST but not yet remitted to the Receiver General of Canada is not subject to deemed trust or priority in favour of the Crown. Nor is this amount subject to an express trust. Costs are awarded for this appeal and the appeal in the court below.

The following are the reasons delivered by

FISH J.

I

90 I am in general agreement with the reasons of Justice Deschamps and would dispose of the appeal as she suggests.

91 More particularly, I share my colleague's interpretation of the scope of the judge's discretion under s. 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*"). And I share my colleague's conclusion that Brenner C.J.S.C. did not create an express trust in favour of the Crown when he segregated GST funds into the Monitor's trust account (2008 BCSC 1805, [2008] G.S.T.C. 221).

92 I nonetheless feel bound to add brief reasons of my own regarding the interaction between the *CCAA* and the *Excise Tax Act*, R.S.C. 1985, c. E-15 ("*ETA*").

93 In upholding deemed trusts created by the *ETA* notwithstanding insolvency proceedings, *Ottawa Senators Hockey Club Corp. (Re)* (2005), 73 O.R. (3d) 737 (C.A.), and its progeny have been unduly protective of Crown interests which Parliament itself has chosen to subordinate to competing prioritized claims. In my respectful view, a clearly marked departure from that jurisprudential approach is warranted in this case.

94 Justice Deschamps develops important historical and policy reasons in support of this position and I have nothing to add in that regard. I do wish, however, to explain why a comparative analysis of related statutory provisions adds support to our shared conclusion.

95 Parliament has in recent years given detailed consideration to the Canadian insolvency scheme. It has declined to amend the provisions at issue in this case. Ours is not to wonder why, but rather to treat Parliament's preservation of the relevant provisions as a deliberate exercise of the legislative discretion that is Parliament's alone. With respect, I reject any suggestion that we should instead characterize the apparent conflict between s. 18.3(1) (now s. 37(1)) of the *CCAA* and s. 222 of the *ETA* as a drafting anomaly or statutory lacuna properly subject to judicial correction or repair.

II

96 In the context of the Canadian insolvency regime, a deemed trust will be found to exist only where two complementary elements co-exist: first, a statutory provision *creating* the trust; and second, a *CCAA* or *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*") provision *confirming* -- or explicitly preserving -- its effective operation.

97 This interpretation is reflected in three federal statutes. Each contains a deemed trust provision framed in terms strikingly similar to the wording of s. 222 of the *ETA*.

98 The first is the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) ("*ITA*") where s. 227(4) *creates* a deemed trust:

> (4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act. [Here and below, the emphasis is of course my own.]

99 In the next subsection, Parliament has taken care to make clear that this trust is unaffected by federal or provincial legislation to the contrary:

> (4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person ... equal in value to the amount so deemed to be held in trust is deemed
>
> > (*a*) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, ...
>
> ...
>
> ... and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

100 The continued operation of this deemed trust is expressly *confirmed* in s. 18.3 of the *CCAA*:

> **18.3** (1) Subject to subsection (2), notwithstanding 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.
>
> (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* ... .

101 The operation of the *ITA* deemed trust is also confirmed in s. 67 of the *BIA*:

> (2) Subject to subsection (3), notwithstanding 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 bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(*a*) unless it would be so regarded in the absence of that statutory provision.
>
> (3) Subsection (2) 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* ... .

102 Thus, Parliament has first *created* and then *confirmed the continued operation of* the Crown's *ITA* deemed trust under *both* the *CCAA* and the *BIA* regimes.

103 The second federal statute for which this scheme holds true is the *Canada Pension Plan*, *R.S.C. 1985, c. C-8* ("*CPP*"). At s. 23, Parliament creates a deemed trust in favour of the Crown and specifies that it exists despite all contrary provisions in any other Canadian statute. Finally, and in almost identical terms, the *Employment Insurance Act*, *S.C. 1996, c. 23* ("*EIA*"), creates a deemed trust in favour of the Crown: see ss. 86(2) and (2.1).

104 As we have seen, the survival of the deemed trusts created under these provisions of the *ITA*, the *CPP* and the *EIA* is confirmed in s. 18.3(2) the *CCAA* and in s. 67(3) the *BIA*. In all three cases, Parliament's intent to enforce the Crown's deemed trust through insolvency proceedings is expressed in clear and unmistakable terms.

105 The same is not true with regard to the deemed trust created under the *ETA*. Although Parliament creates a deemed trust in favour of the Crown to hold unremitted GST monies, and although it purports to maintain this trust notwithstanding any contrary federal or provincial legislation, it does not *confirm* the trust -- or expressly provide for its continued operation -- in either the *BIA* or the *CCAA*. The second of the two mandatory elements I have mentioned is thus absent reflecting Parliament's intention to allow the deemed trust to lapse with the commencement of insolvency proceedings.

106 The language of the relevant *ETA* provisions is identical in substance to that of the *ITA*, *CPP*, and *EIA* provisions:

> **222**. (1) Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for Her Majesty in right of Canada, separate and apart from the property of the person and from property held by any secured creditor of the person that, but for a security interest, would be property of the person, until the amount is remitted to the Receiver General or withdrawn under subsection (2).
>
> ...
>
> (3) Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and InsolvencyAct*), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed
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> > (*a*) to be held, from the time the amount was collected by the person, in trust for Her Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest, ...
>
> ...
>
> ... and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.

107 Yet no provision of the *CCAA* provides for the continuation of this deemed trust after the *CCAA* is brought into play.

108 In short, Parliament has imposed *two* explicit conditions, or "building blocks", for survival under the *CCAA* of deemed trusts created by the *ITA*, *CPP*, and *EIA*. Had Parliament intended to likewise preserve under the *CCAA* deemed trusts created by the *ETA*, it would have included in the *CCAA* the sort of confirmatory provision that explicitly preserves other deemed trusts.

109 With respect, unlike Tysoe J.A., I do not find it "inconceivable that Parliament would specifically identify the *BIA* as an exception when enacting the current version of s. 222(3) of the *ETA* without considering the *CCAA* as a possible second exception" (*2009 BCCA 205*, *98 B.C.L.R. (4th) 242*, at para. 37). *All* of the deemed trust provisions excerpted above make explicit reference to the *BIA*. Section 222 of the *ETA* does not break the pattern. Given the near-identical wording of the four deemed trust provisions, it would have been surprising indeed had Parliament not addressed the *BIA* at all in the *ETA*.

110 Parliament's evident intent was to render GST deemed trusts inoperative upon the institution of insolvency proceedings. Accordingly, s. 222 mentions the *BIA* so as to *exclude* it from its ambit -- rather than to *include* it, as do the *ITA*, the *CPP*, and the *EIA*.

111 Conversely, I note that *none* of these statutes mentions the *CCAA* expressly. Their specific reference to the *BIA* has no bearing on their interaction with the *CCAA*. Again, it is the confirmatory provisions *in the insolvency statutes* that determine whether a given deemed trust will subsist during insolvency proceedings.

112 Finally, I believe that chambers judges should not segregate GST monies into the Monitor's trust account during *CCAA* proceedings, as was done in this case. The result of Justice Deschamps's reasoning is that GST claims become unsecured under the *CCAA*. Parliament has deliberately chosen to nullify certain Crown super-priorities during insolvency; this is one such instance.

III

113 For these reasons, like Justice Deschamps, I would allow the appeal with costs in this Court and in the courts below and order that the $305,202.30 collected by LeRoy Trucking in respect of GST but not yet remitted to the Receiver General of Canada be subject to no deemed trust or priority in favour of the Crown.

The following are the reasons delivered by

ABELLA J. (dissenting)

114 The central issue in this appeal is whether s. 222 of the *Excise Tax Act*, R.S.C. 1985, c. E-15 ("*ETA*"), and specifically s. 222(3), gives priority during *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*"), proceedings to the Crown's deemed trust in unremitted GST. I agree with Tysoe J.A. that it does. It follows, in my respectful view, that a court's discretion under s. 11 of the *CCAA* is circumscribed accordingly.

115 Section 11[1] of the *CCAA* stated:

> **11.** (1) Notwithstanding anything in the *Bankruptcy and Insolvency Act* or the *Winding-up Act*, where an application is made under this Act in respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

To decide the scope of the court's discretion under s. 11, it is necessary to first determine the priority issue. Section 222(3), the provision of the *ETA* at issue in this case, states:

> (3) Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and Insolvency Act),* any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed
>
> (*a*) to be held, from the time the amount was collected by the person, in trust for Her Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest, and
>
> (*b*) to form no part of the estate or property of the person from the time the amount was collected, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to a security interest

> and is property beneficially owned by Her Majesty in right of Canada despite any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.

116 Century Services argued that the *CCAA*'s general override provision, s. 18.3(1), prevailed, and that the deeming provisions in s. 222 of the *ETA* were, accordingly, inapplicable during *CCAA* proceedings. Section 18.3(1) states:

> **18.3** (1) ... [N]otwithstanding 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 held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

117 As MacPherson J.A. correctly observed in *Ottawa Senators Hockey Club Corp*. (*Re*) *(2005), 73 O.R. (3d) 737* (C.A.), s. 222(3) of the *ETA* is in "clear conflict" with s. 18.3(1) of the *CCAA* (para. 31). Resolving the conflict between the two provisions is, essentially, what seems to me to be a relatively uncomplicated exercise in statutory interpretation: does the language reflect a clear legislative intention? In my view it does. The deemed trust provision, s. 222(3) of the *ETA*, has unambiguous language stating that it operates notwithstanding any law except the *Bankruptcy and Insolvency Act*, *R.S.C. 1985, c. B-3* ("*BIA*").

118 By expressly excluding only one statute from its legislative grasp, and by unequivocally stating that it applies despite any other law anywhere in Canada *except* the *BIA*, s. 222(3) has defined its boundaries in the clearest possible terms. I am in complete agreement with the following comments of MacPherson J.A. in *Ottawa Senators*:

> The legislative intent of s. 222(3) of the *ETA* is clear. If there is a conflict with "any other enactment of Canada (except the *Bankruptcy and Insolvency Act*)", s. 222(3) prevails. In these words Parliament did two things: it decided that s. 222(3) should trump all other federal laws and, importantly, it addressed the topic of exceptions to its trumping decision and identified a single exception, the *Bankruptcy and Insolvency Act*... . The *BIA* and the *CCAA* are closely related federal statutes. I cannot conceive that Parliament would specifically identify the *BIA* as an exception, but accidentally fail to consider the *CCAA* as a possible second exception. In my view, the omission of the *CCAA* from s. 222(3) of the *ETA* was almost certainly a considered omission. [para. 43]

119 MacPherson J.A.'s view that the failure to exempt the *CCAA* from the operation of the *ETA* is a reflection of a clear legislative intention, is borne out by how the *CCAA* was subsequently changed after s. 18.3(1) was enacted in 1997. In 2000, when s. 222(3) of the *ETA* came into force, amendments were also introduced to the *CCAA*. Section 18.3(1) was not amended.

120 The failure to amend s. 18.3(1) is notable because its effect was to protect the legislative *status quo*, notwithstanding repeated requests from various constituencies that s. 18.3(1) be amended to make the priorities in the *CCAA* consistent with those in the *BIA*. In 2002, for example, when Industry Canada conducted a review of the *BIA* and the *CCAA*, the Insolvency Institute of Canada and the Canadian Association of Insolvency and Restructuring Professionals recommended that the priority regime under the *BIA* be extended to the *CCAA* (Joint Task Force on Business Insolvency Law Reform, *Report* (March 15, 2002), Sch. B, proposal 71, at pp. 37-38). The same recommendations were made by the Standing Senate Committee on Banking, Trade and Commerce in its 2003 report, *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*; by the Legislative Review Task Force (Commercial) of the Insolvency Institute of Canada and the Canadian Association of Insolvency and Restructuring Professionals in its 2005 *Report on the Commercial Provisions of Bill C-55*; and in 2007 by the Insolvency Institute of Canada in a submission to the Standing Senate Committee on Banking, Trade and Commerce commenting on reforms then under consideration.

121 Yet the *BIA* remains the only exempted statute under s. 222(3) of the *ETA*. Even after the 2005 decision in *Ottawa Senators* which confirmed that the *ETA* took precedence over the *CCAA*, there was no responsive legislative revision. I see this lack of response as relevant in this case, as it was in *Tele-Mobile Co. v. Ontario*, *2008*

SCC 12, [2008] 1 S.C.R. 305, where this Court stated:

> While it cannot be said that legislative silence is necessarily determinative of legislative intention, in this case the silence is Parliament's answer to the consistent urging of Telus and other affected businesses and organizations that there be express language in the legislation to ensure that businesses can be reimbursed for the reasonable costs of complying with evidence-gathering orders. I see the legislative history as reflecting Parliament's intention that compensation not be paid for compliance with production orders. [para. 42]

122 All this leads to a clear inference of a deliberate legislative choice to protect the deemed trust in s. 222(3) from the reach of s. 18.3(1) of the *CCAA*.

123 Nor do I see any "policy" justification for interfering, through interpretation, with this clarity of legislative intention. I can do no better by way of explaining why I think the policy argument cannot succeed in this case, than to repeat the words of Tysoe J.A. who said:

> I do not dispute that there are valid policy reasons for encouraging insolvent companies to attempt to restructure their affairs so that their business can continue with as little disruption to employees and other stakeholders as possible. It is appropriate for the courts to take such policy considerations into account, but only if it is in connection with a matter that has not been considered by Parliament. Here, Parliament must be taken to have weighed policy considerations when it enacted the amendments to the *CCAA* and *ETA* described above. As Mr. Justice MacPherson observed at para. 43 of *Ottawa Senators*, it is inconceivable that Parliament would specifically identify the *BIA* as an exception when enacting the current version of s. 222(3) of the *ETA* without considering the *CCAA* as a possible second exception. I also make the observation that the 1992 set of amendments to the *BIA* enabled proposals to be binding on secured creditors and, while there is more flexibility under the *CCAA*, it is possible for an insolvent company to attempt to restructure under the auspices of the *BIA*. [para. 37]

124 Despite my view that the clarity of the language in s. 222(3) is dispositive, it is also my view that even the application of other principles of interpretation reinforces this conclusion. In their submissions, the parties raised the following as being particularly relevant: the Crown relied on the principle that the statute which is "later in time" prevails; and Century Services based its argument on the principle that the general provision gives way to the specific (*generalia specialibus non derogant*).

125 The "later in time" principle gives priority to a more recent statute, based on the theory that the legislature is presumed to be aware of the content of existing legislation. If a new enactment is inconsistent with a prior one, therefore, the legislature is presumed to have intended to derogate from the earlier provisions (Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at pp. 346-47; Pierre-André Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 358).

126 The exception to this presumptive displacement of pre-existing inconsistent legislation, is the *generalia specialibus non derogant* principle that "[a] more recent, general provision will not be construed as affecting an earlier, special provision" (Côté, at p. 359). Like a Russian Doll, there is also an exception within this exception, namely, that an earlier, specific provision may in fact be "overruled" by a subsequent general statute if the legislature indicates, through its language, an intention that the general provision prevails (*Doré v. Verdun (City)*, [1997] 2 S.C.R. 862).

127 The primary purpose of these interpretive principles is to assist in the performance of the task of determining the intention of the legislature. This was confirmed by MacPherson J.A. in *Ottawa Senators*, at para. 42:

> [T]he overarching rule of statutory interpretation is that statutory provisions should be interpreted to give effect to the intention of the legislature in enacting the law. This primary rule takes precedence over all maxims or canons or aids relating to statutory interpretation, including the maxim that the specific prevails

over the general (*generalia specialibus non derogant*). As expressed by Hudson J. in *Canada v. Williams*, *[1944] S.C.R. 226*, ... at p. 239 ... :

> The maxim *generalia specialibus non derogant* is relied on as a rule which should dispose of the question, but the maxim is not a rule of law but a rule of construction and bows to the intention of the legislature, if such intention can reasonably be gathered from all of the relevant legislation.

(See also Côté, at p. 358, and Pierre-Andre Côté, with the collaboration of S. Beaulac and M. Devinat, *Interprétation des lois* (4th ed. 2009), at para. 1335.)

128 I accept the Crown's argument that the "later in time" principle is conclusive in this case. Since s. 222(3) of the *ETA* was enacted in 2000 and s. 18.3(1) of the *CCAA* was introduced in 1997, s. 222(3) is, on its face, the later provision. This chronological victory can be displaced, as Century Services argues, if it is shown that the more recent provision, s. 222(3) of the *ETA*, is a general one, in which case the earlier, specific provision, s. 18.3(1), prevails (*generalia specialibus non derogant*). But, as previously explained, the prior specific provision does not take precedence if the subsequent general provision appears to "overrule" it. This, it seems to me, is precisely what s. 222(3) achieves through the use of language stating that it prevails despite any law of Canada, of a province, or "any other law" *other than the BIA*. Section 18.3(1) of the *CCAA*, is thereby rendered inoperative for purposes of s. 222(3).

129 It is true that when the *CCAA* was amended in 2005,[2] s. 18.3(1) was re-enacted as s. 37(1) (S.C. 2005, c. 47, s. 131). Deschamps J. suggests that this makes s. 37(1) the new, "later in time" provision. With respect, her observation is refuted by the operation of s. 44(f) of the *Interpretation Act*, *R.S.C. 1985, c. I-21*, which expressly deals with the (non) effect of re-enacting, without significant substantive changes, a repealed provision (see *Attorney General of Canada v. Public Service Staff Relations Board*, *[1977] 2 F.C. 663*, dealing with the predecessor provision to s. 44(f)). It directs that new enactments not be construed as "new law" unless they differ in substance from the repealed provision:

> **44.** Where an enactment, in this section called the "former enactment", is repealed and another enactment, in this section called the "new enactment", is substituted therefor,
>
> ...
>
> (*f*) except to the extent that the provisions of the new enactment are not in substance the same as those of the former enactment, the new enactment shall not be held to operate as new law, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the former enactment;

Section 2 of the *Interpretation Act* defines an enactment as "an Act or regulation or any portion of an Act or regulation".

130 Section 37(1) of the current *CCAA* is almost identical to s. 18.3(1). These provisions are set out for ease of comparison, with the differences between them underlined:

> **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.
>
> **18.3** (1) Subject to subsection (2), notwithstanding 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 held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

131 The application of s. 44(*f*) of the *Interpretation Act* simply confirms the government's clearly expressed intent, found in Industry Canada's clause-by-clause review of Bill C-55, where s. 37(1) was identified as "a technical amendment to re-order the provisions of this Act". During second reading, the Hon. Bill Rompkey, then the Deputy Leader of the Government in the Senate, confirmed that s. 37(1) represented only a technical change:

> On a technical note relating to the treatment of deemed trusts for taxes, the bill [*sic*] makes no changes to the underlying policy intent, despite the fact that in the case of a restructuring under the CCAA, sections of the act [*sic*] were repealed and substituted with renumbered versions due to the extensive reworking of the CCAA.
>
> (*Debates of the Senate*, vol. 142, 1st Sess., 38th Parl., November 23, 2005, at p. 2147)

132 Had the substance of s. 18.3(1) altered in any material way when it was replaced by s. 37(1), I would share Deschamps J.'s view that it should be considered a new provision. But since s. 18.3(1) and s. 37(1) are the same in substance, the transformation of s. 18.3(1) into s. 37(1) has no effect on the interpretive queue, and s. 222(3) of the *ETA* remains the "later in time" provision (Sullivan, at p. 347).

133 This means that the deemed trust provision in s. 222(3) of the *ETA* takes precedence over s. 18.3(1) during *CCAA* proceedings. The question then is how that priority affects the discretion of a court under s. 11 of the *CCAA*.

134 While s. 11 gives a court discretion to make orders notwithstanding the *BIA* and the *Winding-up Act*, R.S.C. 1985, c. W-11, that discretion is not liberated from the operation of any other federal statute. Any exercise of discretion is therefore circumscribed by whatever limits are imposed by statutes *other* than the *BIA* and the *Winding-up Act*. That includes the *ETA*. The chambers judge in this case was, therefore, required to respect the priority regime set out in s. 222(3) of the *ETA*. Neither s. 18.3(1) nor s. 11 of the *CCAA* gave him the authority to ignore it. He could not, as a result, deny the Crown's request for payment of the GST funds during the *CCAA* proceedings.

135 Given this conclusion, it is unnecessary to consider whether there was an express trust.

136 I would dismiss the appeal.

Appeal allowed with costs, ABELLA J. *dissenting.*

* * * * *

APPENDIX

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as at December 13, 2007)

11. (1) [Powers of court] Notwithstanding anything in the *Bankruptcy and Insolvency Act* or the *Winding-up Act*, where an application is made under this Act in respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

...

(3) [Initial application court orders] A court may, on an initial application in respect of a company, make an order on such terms as it may impose, effective for such period as the court deems necessary not exceeding thirty days,

> (*a*) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection (1);
>
> (*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 or proceeding with any other action, suit or proceeding against the company.

(4) [Other than initial application court orders] A court may, on an application in respect of a company other than an initial application, make an order on such terms as it may impose,

(*a*) staying, until otherwise ordered by the court, for such period as the court deems necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection (1);

(*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 or proceeding with any other action, suit or proceeding against the company.

...

(6) [Burden of proof on application] The court shall not make an order under subsection (3) or (4) unless

(*a*) the applicant satisfies the court that circumstances exist that make such an order appropriate; and

(*b*) in the case of an order under subsection (4), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

11.4 (1) [Her Majesty affected] An order made under section 11 may provide that

(*a*) Her Majesty in right of Canada may not exercise rights under subsection 224(1.2) of the *Income Tax Act* or any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, in respect of the company if the company is a tax debtor under that subsection or provision, for such period as the court considers appropriate but ending not later than

(i) the expiration of the order,

(ii) the refusal of a proposed compromise by the creditors or the court,

(iii) six months following the court sanction of a compromise or arrangement,

(iv) the default by the company on any term of a compromise or arrangement, or

(v) the performance of a compromise or arrangement in respect of the company; and

(*b*) Her Majesty in right of a province may not exercise rights under any provision of provincial legislation in respect of the company where the company is a debtor under that legislation and the provision has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

for such period as the court considers appropriate but ending not later than the occurrence or time referred to in whichever of subparagraphs (*a*)(i) to (v) may apply.

(2) [When order ceases to be in effect] An order referred to in subsection (1) ceases to be in effect if

(*a*) the company defaults on payment of any amount that becomes due to Her Majesty after the order is made and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) under any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection; or

(*b*) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

(3) [Operation of similar legislation] An order made under section 11, other than an order referred to in subsection (1) of this section, does not affect the operation of

(*a*) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(*b*) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(*c*) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation 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.

18.3 (1) [Deemed trusts] Subject to subsection (2), notwithstanding 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 held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

(2) [Exceptions] 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 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 where

(*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, notwithstanding 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.

18.4 (1) [Status of Crown claims] In relation to a proceeding under this Act, all claims, including secured claims, of Her Majesty in right of Canada or a province or any body under an enactment respecting workers' compensation, in this section and in section 18.5 called a "workers' compensation body", rank as unsecured claims.

...

(3) [Operation of similar legislation] Subsection (1) does not affect the operation of

(*a*) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(*b*) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(*c*) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation 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.

20. [Act to be applied conjointly with other Acts] The provisions of this Act may be applied together with the provisions of any Act of Parliament or of the legislature of any province, that authorizes or makes provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as at September 18, 2009)

11. [General power of court] 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.

11.02 (1) [Stays, etc. -- initial application] 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 30 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.

(2) [Stays, etc. -- other than initial application] 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

(*c*) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

(3) [Burden of proof on application] The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

...

11.09 (1) [Stay -- Her Majesty] An order made under section 11.02 may provide that

(*a*) Her Majesty in right of Canada may not exercise rights under subsection 224(1.2) of the *Income Tax Act* or any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, in respect of the company if the company is a tax debtor under that subsection or provision, for the period that the court considers appropriate but ending not later than

(i) the expiry of the order,

(ii) the refusal of a proposed compromise by the creditors or the court,

(iii) six months following the court sanction of a compromise or an arrangement,

(iv) the default by the company on any term of a compromise or an arrangement, or

(v) the performance of a compromise or an arrangement in respect of the company; and

(*b*) Her Majesty in right of a province may not exercise rights under any provision of provincial legislation in respect of the company if the company is a debtor under that legislation and the provision has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection,

for the period that the court considers appropriate but ending not later than the occurrence or time referred to in whichever of subparagraphs (*a*)(i) to (v) that may apply.

(2) [When order ceases to be in effect] The portions of an order made under section 11.02 that affect the exercise of rights of Her Majesty referred to in paragraph (1)(*a*) or (*b*) cease to be in effect if

(*a*) the company defaults on the payment of any amount that becomes due to Her Majesty after the order is made and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as

defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection; or

(*b*) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

(3) [Operation of similar legislation] An order made under section 11.02, other than the portions of that order that affect the exercise of rights of Her Majesty referred to in paragraph (1)(*a*) or (*b*), does not affect the operation of

(*a*) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(*b*) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts, or

(*c*) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation 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.

37. (1) [Deemed trusts] 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.

(2) [Exceptions] 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.

Excise Tax Act, *R.S.C. 1985, c. E-15* (as at December 13, 2007)

222. (1) [Trust for amounts collected] Subject to subsection (1.1), every person who collects an amount as or on account of tax under Division II is deemed, for all purposes and despite any security interest in the amount, to hold the amount in trust for Her Majesty in right of Canada, separate and apart from the property of the person and from property held by any secured creditor of the person that, but for a security interest, would be property of the person, until the amount is remitted to the Receiver General or withdrawn under subsection (2).

(1.1) [Amounts collected before bankruptcy] Subsection (1) does not apply, at or after the time a person becomes a bankrupt (within the meaning of the *Bankruptcy and Insolvency Act*), to any amounts that, before that time, were collected or became collectible by the person as or on account of tax under Division II.

...

(3) [Extension of trust] Despite any other provision of this Act (except subsection (4)), any other enactment of Canada (except the *Bankruptcy and Insolvency Act*), any enactment of a province or any other law, if at any time an amount deemed by subsection (1) to be held by a person in trust for Her Majesty is not remitted to the Receiver General or withdrawn in the manner and at the time provided under this Part, property of the person and property held by any secured creditor of the person that, but for a security interest, would be property of the person, equal in value to the amount so deemed to be held in trust, is deemed

> (*a*) to be held, from the time the amount was collected by the person, in trust for Her Majesty, separate and apart from the property of the person, whether or not the property is subject to a security interest, and

(*b*) to form no part of the estate or property of the person from the time the amount was collected, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to a security interest

and is property beneficially owned by Her Majesty in right of Canada despite any security interest in the property or in the proceeds thereof and the proceeds of the property shall be paid to the Receiver General in priority to all security interests.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3 (as at December 13, 2007)

67. (1) [Property of bankrupt] The property of a bankrupt divisible among his creditors shall not comprise

(*a*) property held by the bankrupt in trust for any other person,

(*b*) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides, or

(*b*.1) such goods and services tax credit payments and prescribed payments relating to the essential needs of an individual as are made in prescribed circumstances and are not property referred to in paragraph (*a*) or (*b*),

but it shall comprise

(*c*) all property wherever situated of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge, and

(*d*) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

(2) [Deemed trusts] Subject to subsection (3), notwithstanding 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 bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(*a*) unless it would be so regarded in the absence of that statutory provision.

(3) [Exceptions] Subsection (2) 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 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 where

(*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, notwithstanding 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.

86. (1) [Status of Crown claims] In relation to a bankruptcy or proposal, all provable claims, including secured claims, of Her Majesty in right of Canada or a province or of any body under an Act respecting workers' compensation, in this section and in section 87 called a "workers' compensation body", rank as unsecured claims.

...

(3) [Exceptions] Subsection (1) does not affect the operation of

(*a*) subsections 224(1.2) and (1.3) of the *Income Tax Act*;

(*b*) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, or an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, and of any related interest, penalties or other amounts; or

(*c*) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation 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.

Solicitors:

Solicitors for the appellant: Fraser Milner Casgrain, Vancouver.

Solicitor for the respondent: Department of Justice, Vancouver.

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1 Section 11 was amended, effective September 18, 2009, and now states:

> **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.

2 The amendments did not come into force until September 18, 2009.

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Lubberts Estate v. Mercredi, [2014] A.J. No. 660

Alberta Judgments

Alberta Court of Appeal

E.I. Picard, B.L. Veldhuis and T.W. Wakeling JJ.A.

Heard: February 25, 2014.

Judgment: June 25, 2014.

Docket: 1303-0121-AC

Registry: Edmonton

[2014] A.J. No. 660 | 2014 ABCA 216 | 98 E.T.R. (3d) 1 | 241 A.C.W.S. (3d) 748 | [2014] 10 W.W.R. 41 | 2014 CarswellAlta 1019 | 99 Alta. L.R. (5th) 77 | 577 A.R. 110

IN THE MATTER OF the Estate of Johanna Frederika Lubberts also known as Johanna F. Lubberts Between Irene Hanson (Executor and beneficiary) and Paul Lubberts (beneficiary), Appellants (Applicants), and Marijke Mercredi and Johanna Lubberts, Respondents (Respondents)

(81 paras.)

Case Summary

Wills, estates and trusts law — Wills — Construction and interpretation — General principles — Testator's intention to be given effect — Presumptions — Presumption against disinheritance — Quantity of interest taken — Trusts — Appeal by two children of testator from decision finding testator intended to create trust dismissed — Testator executed several wills and made numerous gifts to children and grandchildren prior to making holograph will stating appellants, two of her four children, would take her estate and benefit from a salary from it while disposing of estate jointly in interests of other children and grandchildren — Appellants had obligations and beneficiaries were identified, benchmarks of trust — Review of prior wills showed testator had no intention of disinheriting all other children and grandchildren, or allowing anyone unfettered discretion to manage estate — Wills Act, s. 7.

Wills, estates and trusts law — Trusts — Express trusts — Requirements — Certainty of intention — Assessing existence of intention to create a trust — Written expression of intention — Appeal by two children of testator from decision finding testator intended to create trust dismissed — Testator executed several wills and made numerous gifts to children and grandchildren prior to making holograph will stating appellants, two of her four children, would take her estate and benefit from a salary from it while disposing of estate jointly in interests of other children and grandchildren — Appellants had obligations and beneficiaries were identified, benchmarks of trust — Review of prior wills showed testator had no intention of disinheriting all other children and grandchildren, or allowing anyone unfettered discretion to manage estate — Wills Act, s. 7.

Appeal by Paul and Irene, two of the testator's children, from a judge's conclusion that the testator intended by way of a holograph will to create a trust. The testator had four children and several grandchildren to whom she had made cash gifts over the final years of her life. She changed her will several times during the 2000s, removing one specific grandchild as a beneficiary and stating that her son Paul was not entitled to her home upon her death if he intended to live in it with a girlfriend the testator considered disruptive to family relations. In a final holograph will prepared shortly before she died, the testator revoked all previous wills and stated that her

children Paul and Irene were to receive her estate as salary to use as they saw fit for themselves, the testators other children and her grandchildren. The judge found the will did not reveal an intention to gift the testator's estate to Paul and Irene. The judge noted that the will required Paul and Irene to make all decisions together, which showed the testator intended that they have certain obligations as to the disposition of the estate.

HELD: Appeal dismissed.

The testator wanted Paul and Irene to hold her estate for the benefit of her children and grandchildren. Her will contained benchmarks of a trust including the identification of beneficiaries and instructions on the joint management of the estate by Paul and Irene. There was no indication that the testator intended to gift her entire estate to Paul and Irene to the exclusion of her other children and grandchildren. It was also clear from reviewing her previous wills that the testator would never give anyone absolute power over what to do with her estate.

Statutes, Regulations and Rules Cited:

Administration of Justice Act, 1982, c. 53 (U.K.), s. 21

An Act how lands may be willed by Testament, 32 Hen. 8, c. 1,

Land Titles Act, *RSA 2000, c. L-4, s. 115*

Wills Act, 1837, 1 Vict., c. 26 (U.K.), s. 9

Wills Act, RSA 2000, c. W-12, s. 7

Wills and Succession Act, *S.A. 2010, c. W-12.2, s. 1*(1)(j), s. 8, s. 8(1), s. 26(c), s. 126

Appeal From:

On appeal from the Order by the Honourable Madam Justice J.M. Ross Dated the 2nd day of August, 2012, Filed on the 16th day of April, 2013 (*2012 ABQB 506*; Docket: ES03 131589).

Counsel

D.G. Groh, Q.C., for the Appellants.

R.B. Hajduk, for the Respondents.

Memorandum of Judgment

Reasons for judgment were delivered by T.W. Wakeling J.A., concurred in by E.I. Picard and B.L. Veldhuis JJ.A.

T.W. WAKELING J.A.

I. Introduction

1 This case[1] is about the meaning to be attached to two sentences[2] of the April 8, 2008 holograph will[3] of Johanna Frederika Lubberts[4]:

> My entire estate -- cash, my house ... and my quarter section of land ... if it is then still in my possession, I leave to my son Paul Johan Lubberts[5] and to my youngest daughter Irene Lubberts Hanson to jointly manage it and use it for their own benefit as salary for instance, or for the benefit of one of their siblings or of one of my grandchildren -- as for instance medical expenses. Irene and Paul will make these decisions together and without yielding to any pressure applied by possible recipients.

2 Justice Ross, the motions judge, held that the testator intended to create a trust[6]. She rejected the argument that the testator intended to give her estate to Paul, the testator's son, and Irene, the testator's daughter, or give them a power of appointment. The parties had agreed that if their mother intended to create a trust, it failed due to uncertainty of its objects.

3 Paul and Irene appeal this judgment.

II. Questions Presented

4 What is the objective of a court asked to review a will?

5 What are the best means of achieving this objective?

6 Is Justice Ross' conclusion that the testator intended to create a trust correct? Or did the testator intend to make a gift of her estate or give a power of appointment to Paul and Irene?

III. Brief Answers

7 A testator drafts a will to increase the likelihood that on her death property which she has a right to dispose will be transferred to the persons she chooses at the time and in accord with the terms she selected.

8 It is the court's role to give effect to the testator's intention. This is an indispensable function the exercise of which perfects the transferal process the testator commenced when she signed her will.

9 To be faithful to the testator's will, a court must identify the meaning the testator wished to convey by her choice of words. This can only be done, in many cases, if the court has access to relevant evidence which records information, in existence at the time the testator signed her will, about the testator's family and the nature of various family relationships, close friends, interests and many other facts which might influence the testator when engaged in the will-making process. A court, aware of important information about the testator, must carefully read the entire will, giving the words she selected or approved their ordinary meaning. This assumption is made because the testator probably intended to attach the ordinary meaning the community of which she is a part gives to these words. If the will and the context within which it is made reveals that the testator had a different intention, a court must adjust its linguistic standards and give the will a meaning consistent with the testator's language values.

10 Ascertaining the testator's will is a subjective -- as opposed to an objective -- enterprise. Values foreign to interpreting contracts and laws are paramount in interpreting wills. A will incorporates a series of choices, which are unilateral acts, and plays a role in our society completely different from that performed by legal instruments which

are the product of multiple actors -- such as contracts or laws. Subject to public policy concerns, there is no good reason to give a testator's last will and testament a meaning not completely faithful to her wishes.

11 Parties who advance a claim to property the testator disposes under her will and others with a legitimate interest in ensuring that the testator's intentions are honoured may present to the court information about the life of the testator which may assist the court allocate the testator's property in the manner she wished. There is one qualification which must be stated. Because Ms. Lubberts made her will on April 8, 2008, the Court may not review evidence that relates to the intention of the testator with respect to specific dispositions. But this is not the case for wills made after January 31, 2012. Section 26(c) of the *Wills and Succession Act*, *S.A. 2010, c. W-12.2* states that a court "may admit ... evidence of the testator's intent with regards to the matters referred to in the will".

12 Ms. Lubberts did not intend to give her entire estate to Paul and Irene and leave nothing to her other two children. The words in the April 8, 2008 will and other relevant information disclose that the testator intended to create a trust for the benefit of her children and grandchildren. As the parties have agreed that she failed to create a valid trust, it follows that her estate will be distributed in accordance with governing intestacy principles.

13 Justice Ross came to the correct conclusion.

IV. Applicable Statutory Provisions

14 Sections 8 and 126 of the *Wills and Succession Act*, *S.A. 2010, c. W-12.2* are as follows:

> 8(1) Except as expressly provided otherwise in sections 23 or 25 or in another enactment of Alberta
>
> (a) this Part applies to wills made on or after the day this section comes into force,
>
> (b) the former Act continues in force, as if unrepealed, in respect of wills made under that Act,
>
> ...
>
> (2) Despite subsection (1), sections 26 and 37 to 40 apply to a will or other writing, a marking or an obliteration regardless of when the will, writing, marking or obliteration was made, if the testator died after the coming into force of this section.
>
> ...
>
> 126 This Act comes into force on Proclamation.

15 The *Wills and Succession Act* was proclaimed on February 1, 2012.

16 Section 7 of the *Wills Act, R.S.A. 2000, c. W-12* is as follows:

> 7. A testator may make a valid will wholly by the testator's own handwriting and signature, without formality, and without the presence, attestation or signature of a witness.

V. Statement of Facts

A. Ms. Lubberts Made Her Last Will on April 8, 2008

17 Ms. Lubberts, the mother of the appellants and respondents, died on December 20, 2009. She was eighty-four years old.

18 The testator's April 8, 2008 holograph will reads as follows:

> I, Johanna Frederika Lubberts ... revoke all previously made wills and especially so the will made under the advice of Mr. Chris Head, lawyer. ... That Will has outlived its purpose which I had hoped would inspire my grandchildren to save at an early age and develop the habit to add to their savings regularly so that they would be independent financially throughout their lives. To assist them I started giving every grandchild as well as my children financial presents on their birthdays. Some of them, knowing that the money came out of a not-so-large pension income, refused accepting it and started saving on their own; others "demanded" it. I started my own savings account in "Ing". This present will names as my executrix my youngest daughter Irene Lubberts Hanson. A second account in "Ing" was started in joint names: my name and Irene's. Every month I deposit in that account $500.00. Irene can access that money at my death to pay for her personal expenses, as for instance to replenish her salary if it is necessary for her to take time off from her job to look after my interests, -- medical care and disposal of my body etc. -- described in another letter.
>
> My entire estate -- cash, my house ... and my quarter section of land at Whitecourt ... if it is then still in my possession, I leave to my son, Paul Johan Lubberts and to my youngest daughter, Irene Lubberts Hanson, to jointly manage it and use it for their own benefit as salary for instance, or for the benefit of one of their siblings or one of my grandchildren -- so for instance for medical expenses. Irene and Paul will make all those decisions together and without yielding to any pressures applied by possible recipients.

19 The will referred to in the first sentence was made on August 13, 2002.[7] It made Irene, the testator's youngest daughter, the executor and trustee. The August 13, 2002 will also contained specific bequests, including a gift of $4000 to each of her grandchildren alive at her death. The residue of the estate went in equal shares to her four children.

20 Ms. Lubberts made changes to the August 13, 2002 will.

21 On June 21, 2004, in a holograph codicil, she declared that one of her grandsons "will not benefit in any way from my will" (emphasis in the original).

22 She also made changes through holograph codicils dated June 24, 2005 and December 2, 2007.

23 Part of the June 24, 2005 codicil was in this form:

> While I had hoped that my son Paul Johan Lubberts would live in my home after my death and leave it to his son eventually, I see myself forced to change these expectations. Under no conditions will I want to allow Paul's "girlfriend" Laurie Semenovich to live in my house or to allow her to obtain any interest in my house, whether she and Paul are to get married or not. In a letter addressed to my four children, I will explain the reasons for my decision. The above-mentioned "Laurie" has been and still is a disruptive influence in our family relations.

24 The important part of the December 2, 2007 codicil follows:

> Changes to be made -- no cash amount will go to my grandchildren ($4000.00 per grandchild was left to each of my grandchildren, since I have on the birthdays of my grandchildren given each of them amounts of money) and no cash money to be left to any other persons mentioned in the will, since these gifts have been carried out already in the last number of years.
>
> My house ... will become the property of my son, Paul J. Lubberts and my daughter Irene Lubberts-Hanson, my son to live in the house and take care of it -- he cannot rent or sell the house to non-family members. He may -- with Irene's consent sub-let part of the house (e.g. the basement suite) but only to members of the immediate family. My 1/4 section at Whitecourt will have to be sold -- with competent legal advice from a trustworthy advocate and from a real estate person whom I plan to name when I will rewrite my whole will.

25 The December 2, 2007 codicil was the last revision to her August 13, 2002 will before she prepared the April 8, 2008 holograph will.

B. Justice Ross Concluded That the Testator Intended To Create a Trust

26 Justice Ross issued a well-written and carefully-reasoned decision. *2012 ABQB 506*.

27 She concluded that Ms. Lubberts' holograph will did not reveal an intention to make a gift of her estate to Paul and Irene, the appellants: "The overall import of the Holograph Will is, in my view, not consistent with a transfer of ownership of the estate to Paul and Irene" *2012 ABQB 506*, para22. See also *2012 ABQB 506*, para28.

28 Having eliminated the gift concept, the motions judge then asked whether the testator intended to make Paul and Irene trustees under a trust or appointors under a power of appointment. Justice Ross concluded that the testator intended to make the testator's two children trustees:

> [40] In my view, the language employed by the [testator] ... indicates that she intended to impose an obligation on Paul and Irene. [They] ... are required to make all decisions in relation to the estate together: "Irene and Paul will make all those decisions together and without yielding to pressure applied by possible recipients". They are directed to jointly "manage" the estate and "use it" to benefit themselves, their siblings or the grandchildren, with examples of such benefits provided. They are not merely empowered to dispose of the estate to any or all of those persons. There is no provision in the Holograph Will regarding disposition of the estate should Paul and Irene not exercise their joint power of appointment. While this is not determinative (property not disposed of reverts to the estate ...), it is a further indication that the [testator] ... considered that Paul and Irene would be obliged to act as she directed.

VI. Analysis

A. The Standard of Review Is Correctness

29 An appeal court reviews legal determinations made by the court appealed from on a correctness standard. *Housen v. Nikolaisen*, *[2002] 2 S.C.R. 235*, 247. The "primary role of appellate courts is to delineate and refine legal rules" so that similar fact patterns within the jurisdiction have similar legal consequences. *Housen v. Nikolaisen*, *[2002] 2 S.C.R. 235*, 247-48.

30 More than forty years ago the Supreme Court of Canada, in *Alberta Giftwares Ltd. v The Queen*, [1973] S.C.R. 584, 588, held that "in construing a will, deed, contract, prospectus or any other commercial document, the legal effect to be given to the language employed is a question of law". This is still the case. No subsequent decision of the Supreme Court of Canada has abandoned this position. See *Housen v Nikolaisen*, *[2002] 2 S.C.R. 235*, 261.

31 There is no reason for an appeal court to ignore a fact-finder's work unless it is clearly wrong. *Housen v Nikolaisen*, *[2002] 2 S.C.R. 235*, 253. Trial judges have considerable institutional advantages which, in most cases, must be recognized.

B. A Person May Transfer a Property Interest to Another by Gift

32 A person may make a gift of real or personal property in which she has a legal or equitable interest by *inter vivos* gift or testamentary disposition. J. MacKenzie, Feeney's Canadian Law of Wills s. 1.1 (4th ed. looseleaf issue 49 April 2014) & A. Oosterhoff, Oosterhoff on Wills and Succession 113 (7th ed. 2011). An *inter vivos* gift exists if the donor, while alive, intends to transfer unconditionally legal title to property and either transfers possession of the property to the donee or some other document evidencing an intention to make a gift and the donee accepts the gift. See *Standard Trust Co. v Hill*, *[1922] 2 W.W.R. 1003*, 1004 (Alta. Sup. Ct. App. Div.) ("A gift of a chattel *per verba de presenti* united with possession in the donee makes a perfect gift, whether the possession proceeds,

accompanies or follows the words"); *Cochrane v Moore*, 25 Q.B.D. 57 (C.A. 1890) (there is no gift of a chattel capable of manual transfer without delivery from the donor to the donee); J. MacKenzie, Feeney's Canadian Law of Wills s.1.4 ("there must be evidence of a donative intent of the donor to be unconditionally bound by the transfer coupled with the delivery of either the subject matter of the gift or some appropriate indicator of title") & W. Raushenbush, Brown on Personal Property 77-78 (3d. ed. 1975) (the donor must intend to give the property; the donor must transfer the property to the donee; and the donee must accept the property).

33 A gift by testamentary disposition exists if the testator clearly intended to transfer unconditionally legal title to the property on her death to a specific donee. *Re Walker*, *56 O.L.R. 517*, 524 (C.A. 1925) (an unequivocal gift by the testator to his wife deprived the testator of the right to make any other disposition of the same property) & *Re Freedman*, *41 D.L.R. 3d 122*, 127 (Man. Q.B. 1973) (the testator gave "an absolute gift [to the donee] ... with all the rights incident to ownership"). A testator may revoke a testamentary gift. See J. MacKenzie, Feeney's Canadian Law of Wills s. 1.7 (4th ed. looseleaf issue 49 April 2014). Or the estate may not be able to honour the testator's intention if the testator's debtors' interests cannot be met without disposing of the property in another manner.

C. A Power of Appointment Gives a Donee or an Appointor the Authority To Determine Who Will Receive the Property the Subject of the Power of Appointment

34 A testator may give to a person named in her will a power[8] of appointment. The holder of this power is called either the donee, to distinguish the holder of the power from the owner of the property who gave the power, or the appointor, to distinguish the holder of the power from the person who benefits from the exercise of the power, the appointee. A power of appointment gives the donee the authority to determine who will receive the testator's property. E. Gillese, The Law of Trusts 24 (3d ed. 2014). The donee is not the legal owner of the property. But the donee does have a power which if exercised affects the donor's property. E. Gillese, The Law of Trusts 24 (3d ed. 2014).

35 A donee is under no legal obligation to exercise a power of appointment. E. Gillese, The Law of Trusts 28 (3d ed. 2014) ("Donees of a power of appointment need not exercise the power"); Waters, Water's Law of Trusts in Canada 98 (4th ed. 2012) ("a power merely *enables* the ... [donee] to act in the enumerated fashion, it does not require him so to act") & Gray, "Powers in Trusts and Gifts Implied in Default of Appointment", 25 Harv. L. Rev. 1, 3 (1911) ("Equity never compels a donee to exercise a power of appointment"). If the donee declines to exercise the power, the property will pass to those entitled to it in the event of default or will revert to the testator's estate. E. Gillese, The Law of Trusts 25 (3d ed. 2014).

36 In *Higginson v Kerr*, *30 O.R. 62*, 67 & 68 (H.C.J. 1898) Justice Ferguson characterized the following provision in a wealthy bachelor's will as a power of general appointment:

> 1. I ... appoint ... my friends ... executors and trustees of ... my last will and testament ... .
>
> ...
>
> 10. I also give my ... executors power and desire them to dispose of any balance of my estate or property which may be in the bank or in any securities, to the best of their judgment, where they may consider it will do the most good and deserving.

37 The High Court explained why below:

> No estate or property is directly given to the executors ... by the tenth [paragraph] ... of the will. What they are given is a power, and a power only. There is nothing in ... tenth ... [paragraph] to indicate a trust. A full power is given, and all else seems to be left at large, undefined, and in the entire discretion of the executors. Powers are either general or limited. General powers are such as the donee of the power can exercise in favour of such person or persons as he pleases. Limited powers are such as the donee of the

> power can exercise only in favour of certain specified persons or classes. ... I am clearly of the opinion that the power given by... [the] tenth ... [paragraph] to the executors is a general power. There is then ... a general power and no trust in respect of the residue of the estate ... .
>
> The executors are ... given an absolute power of appointment in respect of the residue of the estate. ... Being in possession of this absolute, general, and unqualified power of appointment, the executors may appoint in favour of themselves ... or any other person or persons ... .

38 The fact that the testator referred to his executors as "trustees" in the first paragraph of the will did not cause the High Court to conclude that the testator intended to create a trust. *30 O.R. 62*, 68 (H.C.J. 1898). See *Gibbs v. Rumsey,* 35 Eng. Rep. 331, 332 (Ch. 1813) ("The first words of the residuary clause amount clearly to an absolute gift to them; as the mere circumstance of giving them the description of trustees and executors cannot make them trustees as to that part of her property expressly bequeathed to them") & *In re Hawley,* 10 N.E. 352, 356 (N.Y. 1887) ("Merely calling an executor or guardian a trustee does not make him such").

D. The Benchmarks of a Valid Power of Appointment

39 A power of appointment relating to land and interests in land must comply with the *Land Titles Act, R.S.A. 2000, c. L-4, s. 115*. A power of attorney must be in writing and meet certain criteria.

40 All powers of appointment relating to personal property must identify the property which the donor has made the subject of a power of appointment with sufficient precision. A court must be able to conclude on a balance of probabilities whether it is or is not power property. Suppose that A declares that she gives to B to donate to any publicly-funded Canadian art gallery her Dorothy Knowles paintings which were painted while Robert Hurley, another well-known Saskatchewan landscape painter, was alive. Suppose also that Knowles signs and dates her paintings. The date of Hurley's death is beyond doubt. These facts would allow an adjudicator to identify with sufficient certainty the paintings subject to the power.

41 But suppose that A declares that she gives to B to donate to the Art Gallery of Alberta her Dorothy Knowles' paintings which the famous painter William Perehudoff, Knowles' husband, thought were the ten best Knowles' paintings A owned. And suppose that there is no evidence that Perehudoff ever expressed such an opinion. This standard would be far too imprecise to identify the power property.

42 There is one other criterion. The objects of two types of powers must pass a certainty test.

43 To understand this criterion, one must know that there are three types of powers of appointment. There are general, special and hybrid powers of appointment. E. Gillese, The Law of Trusts 24 (3d ed. 2014).

44 A general power of appointment authorizes the donee to give the donor's property to any person with no restrictions on the power whatsoever. E. Gillese, The Law of Trusts 25 (3d ed. 2014). A gives B a general power of appointment in this example: B may give my Dorothy Knowles' landscape paintings to anyone she wants to. *Re Nichols, 34 D.L.R. 4th 321*, 330 (Ont. C.A. 1987) ("I direct my executor to follow the dictates and directions given to him from time to time by Carson Cowan, as to the distribution of the rest and residue of my Estate"); *Re Hays,* [1938] 3 D.L.R. 757 (Ont. Sup. Ct.) aff'd [1938] 4 D.L.R. 775 (Ont. C.A.) ("with absolute power and authority to ... [my executors] to distribute and divide the same amongst such persons, objects or benevolences as to them may seem best, this power to my executors to be unrestricted"); *Meagher v. Meagher, 22 D.L.R. 733* (Ont. Sup. Ct. App. Div. 1915) ("To hold all my property ... and to make such disposition thereof from time to time among my children or otherwise as my said daughters decide to make they ... in the meantime have all rents and profits therefrom") & *Tassone v. Pearson, 2012 BCSC 1262*, para75 ("the provisions of Mrs. Pearson's will create a general power of appointment in her favour and that accordingly, on the face of the will, she is entitled to exercise her discretion as she wishes").

45 Special and hybrid powers of appointment exist if the donor identifies potential appointees by describing their traits.

46 A special appointment restricts the class by listing those who are potential appointees. *McEwen v. Day,* [1955] N.Z.L.R. 575, 578 (Sup. Ct.) ("a special power ... is a power to appoint property amongst a limited class of persons") & E. Gillese, The Law of Trusts 25 (3d ed. 2014). For example, A declares that B may give A's Dorothy Knowles' landscape paintings to either the Art Gallery of Alberta in Edmonton or the Norman MacKenzie Art Gallery in Regina guided only by her assessment of the use each institution would make of the collection.

47 A hybrid power of appointment describes an appointment which reduces the class of potential appointees by expressly designating noneligible appointees. See E. Gillese, The Law of Trusts 26 (3d ed. 2014). A hybrid appointment restricts the class by listing those who may not be potential appointees. See *McEwen v. Day,* [1955] N.Z.L.R. 575, 581 (Sup. Ct.) ("Certainty can be secured either by an inclusive definition or by an exclusive definition, though it is difficult to treat the exclusion of only one person, or comparatively few persons, as affecting sufficient certainty"). For example, A states that B may give A's Dorothy Knowles' landscape paintings to anyone except the Art Gallery of Ontario and the National Gallery of Canada.

48 To ensure that the lawfulness of the appointor's conduct can be ascertained, equity insists that a workable standard be in place to measure lawful appointor conduct in instances of specific and hybrid powers of appointment. This is the second mark of a valid power of appointment. Justice Gillese describes it in the following passage:

> In creating ... [special and hybrid powers of appointment], the description of the class must be crafted in such a way that it passes the certainty of objects test. Certainty of objects means that the description of the class of possible appointees must be sufficiently clear for the donee to be able to properly exercise the power, if the donee so chooses. In the case of [hybrid] ... powers, it is the class of excepted persons who must be sufficiently clearly described.
>
> ...
>
> The question of certainty of objects is to be determined as of the effective date of the document that declares the donor's intention.

The Law of Trusts 33-34 (3d ed. 2014). See also *Re Gulbenkian's Settlement Trusts,*[1970] A.C. 508, 521 (H.L. 1968) (there must be no doubt about whether a person is an eligible appointee).

E. The Benchmarks of a Valid Trust

49 An express trust[9] exists if A, the settlor, declares an intention to transfer ascertainable property to B, the trustee, for the benefit of C, an identifiable person or object, the beneficiary, and A conveys the trust property to B.

50 An express trust will unequivocally demonstrate an intention to create a trust, and clearly identify the trust property so that it can be ascertained and the objects of the trust so that the permitted use may be determined. E. Gillese, The Law of Trusts 41-47 (3d ed. 2014) & *Morice v. Bishop of Durham,* 32 Eng. Rep. 947, 952 (Ch. 1805) ("If neither the objects nor the subjects are certain, then the recommendation or request does not create a trust").

F. There Are Significant Differences Between a Trust and a Power of Appointment

51 Justice Gillese, in The Law of Trusts 23-24 (3d ed. 2014), explains the differences between a trust and a power:

> A trustee must perform the terms of a trust, whereas a donee of a power need not exercise the power at all. Trustees of a discretionary trust decide who is to take and how much, whereas a donee must also decide

> whether anyone is to take. If a trustee fails to perform the terms of the trust, the court will replace the trustee or complete the trust itself. Completion can take the form of equal distribution of the trust property among the beneficiaries, or in such proportions as is appropriate in the circumstances.
>
> In short, failure to perform renders a trustee liable for breach of trust. Failure to exercise a power is not, and cannot be, a breach, because the essence of the power is that its holder has a discretion whether to exercise the power. This fundamental distinction has important consequences not only for the trustee/donee but also for the beneficiaries/appointees. Potential appointees under a power of appointment have no proprietary power in the subject matter of the power unless and until the donee exercises it in their favour. The beneficiaries of a trust, on the other hand, have a proprietary interest in the trust property.

See also D. Waters, Waters' Law of Trusts in Canada 88 (4th ed. 2012) & Peithmann, "A Look at the Principles and Uses of Powers of Appointment", 132:8 Tr. & Est. 38, 39 (1993) (a person who may benefit from the exercise of a power of appointment has no legal interest in the property until the appointor exercises the power of appointment in his favour); *Tassone v. Pearson,* 2012 BCSC 1262, para29 ("It is the true discretionary nature of a power of appointment that distinguishes it from a trust") & *McEwen v. Day*, [1955] N.Z.L.R. 575, 583 (Sup. Ct.) ("There is no duty to exercise a discretionary power; it is not a trust).

G. The Court Must Review the Will and Other Relevant Evidence To Determine Whether the Testator Intended To Create a Trust or a Power of Appointment or Gift Her Estate to Two of Her Children

52 To determine whether the testator intended to create a trust or a power of appointment or gift her estate the Court must identify the meaning the testator attached to the words of her will, taking into account[10] any other relevant evidence which may assist the Court to ascertain the testator's intention. A court must assume that the testator intended to give the words which appear in her will their ordinary meaning unless the will and the context rebuts this assumption.[11] This assumption is made because our experience reveals that most people in a community will express themselves in language to which others in the community attach the same sense as the speaker. A court should not be reluctant to bring its common sense to bear.[12] This is especially so if the person who drafted the will is not a lawyer.[13]

53 A court must never forget that a testator drafts a will for a specific purpose.[14] She does it so that on her death property which she has the right to dispose will be transferred to the persons she chooses on the terms she desires. When she completes her will she can take no other steps to increase the likelihood her intentions will be implemented on her death.

54 Giving effect to a testator's wishes is the task of the executor and, in some cases, the court. A court plays an indispensable and complementary role in ensuring that a testator's wishes are respected. It is this activity, when taken in conjunction with the act of will drafting, which results in the transfer of the testator's property to her heirs. 9 J. Wigmore, Evidence in Trials at Common Law s.2458 (J. Chadbourn rev. 1981) ("wills, if they are not to remain empty manifestoes, must be enforced"). Her will drafting begins a process which, once completed, produces a binding order that supersedes[15] the decisions made by the legislators enacting intestacy succession[16] rules affecting her property. Stark, "Extrinsic Evidence and the Meaning of Wills in Texas", 31 Sw. L.J. 793, 794 (1977) ("the implicit justification for permitting property to pass by will is that a policy exists in favor of permitting the testator ... to determine to whom and how his property will pass on his death") & Betts, "Misdescriptions in Wills", 9 Can. B. Rev. 579, 585 n. 12 (1929) ("In the Courts both in England and the United States, it is recognized as a natural and reasonable assumption, that when a testator makes a will he does not intend to die intestate").

55 Canadian[17], English[18] and American[19] courts accept that it is their role to ascertain a testator's wishes and to give effect to them.[20]

56 Ascertaining the testator's intention is a subjective undertaking.[21]

57 The consensus which has developed regarding the proper role of the court breaks down when the court must

decide whether circumstances which justify consideration of decisional aids other than the will exist. Canvassing these sources may provide the court with valuable information about the testator's family[22] and the nature of various family relationships[23], close friends[24], occupation, interests, property, lifestyle, philanthropic tendencies[25] and a host of other facts which might influence the decisions a person contemplating a will[26] needs to make.[27] The factual backdrop against which the will was created may be very telling.[28] It may explain the meaning the testator attached to words in her ordinary speech. It may provide helpful guidance in understanding who the important people in the testator's life were and why. Reference to this background information may reveal the persons the testator most likely regarded as persons whom she would like to assist. A testator's intention is more likely to be accurately established if the court has a solid grasp of the essential features of the testator's life at the time she made her will.

58 One school of thought approves resort to extraneous material only if a plain reading of the will supports more than one plausible answer to the question presented to the court for adjudication.[29] Adherents to this viewpoint may believe that the law gave words fixed meanings[30] and that language may have a sufficient level of certainty independent of the context which produced the text.[31] *Tottrup v. Patterson, [1970] S.C.R. 318*, 322 (1964) ("if the meaning is clear, surrounding circumstances cannot be looked at to throw a doubt upon the meaning"); *Re Tyhurst Estate*, *[1932] S.C.R. 713*, 719 ("where [the testator's language] ... is ambiguous, we are entitled to consider not only the provisions of the will, but also the circumstances surrounding and known to the testator at the time when made the will"); *Marchuk v. Marchuk, 52 W.W.R. 652*, 657 (Sask. Q.B. 1965) (applied *Tyhurst)*; *Higgins v. Dawson*, [1902] A.C. 1, 8 (H.L. 1901) ("the will is ... unambiguous and ... no proof in reference to the amount of the testator's estate at the date of the will can affect its construction"); *San Antonio Area Foundation v. Lang,* 35 S.W. 3d 636, 640 (Tex. 2000) ("When a testatrix's intent is apparent on the face of the will ... extrinsic evidence is not admissible to show a contrary meaning") & *Heinatz v. Allen*, 217 S.W. 2d 994, 995 (Tex. 1949) ("in view of the simple and plain terms of the will, the intention of the testatrix as to what is devised is to be ascertained without aid from evidence as to the attending circumstances"). This is not a viewpoint I share.

59 A second school of thought is willing to explore extraneous material without demanding that an initial assessment of the clarity of the words of the will be undertaken.[32] It encourages a court to review profferred extrinsic evidence and reserve its ruling on its admissibility until it rules on the merits of the case.[33]

60 Supporters of this school believe that the meaning of words a testator has used may not be accurately divined without a grasp of the context in which they were expressed and an understanding that the same words may bear different meanings in different contexts.[34] To my mind, this is a compelling position.

61 Words in a will are just part of the message. A court may consider additional data before giving them legal effect. 9 J. Wigmore, Evidence in Trials at Common Law ss.2458 & 2470 (J. Chadbourn rev. 1981) ("The process of interpretation ... though it is commonly simple and often unobserved, is always present, being inherently indispensable" and "words always need interpretation"); A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 53 (2012) ("Any meaning derived from signs involves interpretation, even if the interpreter finds the task straightforward"); *Stewart & Selder,* 473 S.W.2d 3, 6 (Tex. 1971) ("words always need interpretation"); Kerridge & Rivers, "The Construction of Wills", 116 Law Q. Rev. 287, 291 (2000) ("words get their meaning from the way in which they are used"); Stark, "Extrinsic Evidence and the Meaning of Wills in Texas, 31 Sw. L.J. 793, 797 (1977) ("words used in a will ... are only imperfect symbols for physical objects, people or concepts") & F. Lieber, Legal and Political Hermeneutics 17-18 (2d ed. 1839) ("the same rules which common sense teaches everyone to use, in order to understand his neighbor, are necessary likewise, although not sufficient for the interpretation of documents or texts of the highest importance").

62 Adherents of this philosophy accept that "surrounding circumstances"[35] may clarify the ambiguities. Professors Kerridge and Rivers explain this assertion:

> [S]urrounding circumstances do not so much make language appear ambiguous, as make it clear, that in a particular context, it is *not* ambiguous at all. For example, a testator may make a will leaving "all my money to my nephews and nieces" and the intentionalist reader will think that those words are doubly ambiguous. There appears to be an ambiguity in the word "money" and another in the words "nephews and nieces". But

> it may turn out that all the testator's property is money in the bank and so clearly "money"; and that the only people who can possibly be described as the testator's "nephews and nieces" are all blood nephews and nieces.

"The Construction of Wills", 116 Law Q. Rev. 287, 312-13 (2000). See *Kell v. Charmer,* 53 Eng. Rep. 76 (Ch. 1856) & *Goblet v. Beechy*, 57 Eng. Rep. 910 (Ch. 1829) (extrinsic evidence of the special meaning of terms of art from those who shared the same occupation as the testator eliminated any doubt as to the meaning intended by the testator).

63 While this school accepts that it is desirable to study data other than the will, it is opposed, in most cases[36], to reviewing evidence that relates to the intention of the testator with respect to specific dispositions.[37] It has a strong aversion to receiving evidence which competes with the testator's intention as stated in the will. *Re Madison Estate*, *[1997] A.J. No. 51*, para12 ("I can [not] consider the [drafter's] ... statements ... recounting [the testator's] wishes as to her car ... as this would be considered direct evidence of intention outside the will"); *Haidl v. Sacher*, *106 D.L.R. 3d 360*, 363 (Sask. C.A. 1979) (the "trial judge was right in refusing to admit the affidavit evidence in an attempt to establish an intention contrary to that to be determined by giving to the words of the will their ordinary and natural meaning"; *Robinson Estate v. Robinson*, *337 D.L.R. 4th 193*, 202 (Ont. C.A. 2011) ("The law properly regards the direct evidence of third parties about the testator's intention to be inadmissible"); *Re Kaptyn Estate*, *2010 ONSC 4293*, para36 ("The rationale for this principle is admissibility rests in preserving the written will as the primary evidence of the testator's intention and avoiding displacing the written will with an 'oral' will"); *Re Harmer*, *40 D.L.R. 2d 825*, 827 (Ont. H.C. 1963) ("an affidavit purporting to swear to the intentions of the testator ... was plainly inadmissible"); *Stewart v. Selder*, 473 S.W. 2d 3, 7 (Tex. 1971) ("The intention of the testator must be found, in the last analysis, in the words of the will, and for that reason his other declarations of intention dealing with the subject out of specific documents are generally not admissible") & 9 J. Wigmore, Evidence in Trials at Common Law s.2471 (J. Chadbourn rev. 1981) (the will records the intention of the testator).

H. The Testator Intended To Create a Trust for the Benefit of Her Children and Grandchildren

64 The Court finds no error in Justice Ross' conclusion that the testator intended to create a trust for the benefit of her children and grandchildren. Ms. Lubberts wanted her youngest daughter, Irene, and her son, Paul, to hold her estate for the benefit of her children and grandchildren. Justice Ross' determination is supported by the unequivocal message that is contained in the testator's direction to "jointly manage [her estate] ... for their own benefit ... or for the benefit of one of their siblings or one of my grandchildren".[38] She directed them to make decisions with the best interests of her extended family uppermost in their minds. This message is the product of this sentence: "Irene and Paul will make all these decisions together and without yielding to any pressure applied by possible recipients".

65 While it is obvious that a lawyer instructed to impress the testator's estate with a trust would have used different language[39], the benchmarks of a trust nonetheless still emerge from her will. She intended to make two of her children the trustees. She did not wish to bestow on them a simple option to dispose of her estate if they chose to do so. The testator identified her children and grandchildren as beneficiaries. Indeed she states that her estate is to be managed for the "benefit" of her children and grandchildren. The testator intended Irene and Paul to use the property for the benefit of all her children and grandchildren.

66 This is one of the benchmarks of a trust. "[A] trustee must perform the terms of a trust, whereas a donee of a power need not exercise the power at all". E. Gillese, The Law of Trusts 23 (3d ed. 2014). Had she been content to give Irene and Paul a choice as to whether they distributed her estate, most likely she would have provided some direction in the event they declined to do so. There is none. This conclusion is in keeping with the testator's character, insight into which are easily drawn from reading her historical wills.

67 I agree with Justice Ross' implicit determination that there is no basis to conclude that the testator intended the words she used in her will to have any meaning other than their usual and ordinary meaning in Alberta.

68 The motions judge said this:

> In my view, the language employed by the testatrix indicates that she intended to impose an obligation on Paul and Irene. Paul and Irene are required to make all decisions in relation to the estate together: "Irene and Paul will make all these decisions together and without yielding to any pressure applied by possible recipients". They are directed to jointly "manage" the estate and "use it" to benefit themselves, their siblings or the grandchildren, with examples of such benefits provided. They are not merely empowered to dispose of the estate to any or all of these persons. There is no provision in the Holograph Will regarding the disposition of the estate should Paul and Irene not exercise their joint power of appointment. While this is not determinative (property not disposed of reverts to the estate ...), it is a further indication that the testatrix considered that Paul and Irene would be obliged to act as she directed.

2012 ABQB 506, para40.

69 Her will does not support the argument that the testator intended to give her estate to her youngest daughter and her only son. She knew what a gift[40] was -- noting that she had given her children and grandchildren "financial presents on their birthdays" -- and did not employ gift language in the two sentences under scrutiny. In addition, the testator announced that she intended to deposit $500 every month into a savings account in the name of Irene and the testator so that on the testator's death, Irene would have a source of cash which she could access to cover any costs she might incur immediately after her mother's death. Had the testator intended to give her estate to Irene and her son, it is unlikely that she would have taken this step.[41]

70 Several other features of the April 8, 2008 will strongly speak against the conclusion that the testator intended to give her estate to her youngest daughter and only son. First, the will directed Irene and Paul to manage her estate for the benefit of her children and grandchildren. If the testator had intended to gift her estates to Irene and Paul, the likelihood this direction would have been issued is very low. It would have been superfluous. Second, if the testator had wished to gift her estate to just two of her children and grandchildren, she most likely would have stated the allocation she intended. The testator liked to be the one making the important decisions about her estate. Third, as already noted, the testator would not likely have created a joint bank account for the benefit of Irene if she had intended to gift to Irene a part of her estate.

71 The use of the word "leave" in the sentence "My entire estate ... I leave to my son ... and to my youngest daughter" does not support the argument that the testator intended on her death to gift her entire estate to her two named children. The rest of the words in the will belie such an intention. "Leave", in this context, is a neutral word, doing nothing more than designating an intention to transfer her estate to her son and youngest daughter in their capacity as managers or trustees of her estate.[42]

72 This conclusion harmonizes the provisions in the will[43] and is consistent with all the relevant material before the Court. The testator was a mother interested in the future financial security of her children and grandchildren. A gift to only two of her children would leave nothing for her other two children and several grandchildren. The likelihood she intended to do this is very low. Nothing in the April 8, 2008 will reveals a desire on the testator's part to disinherit any of her children. If she had such an intention, she would have said so in plain English. In earlier versions she made it clear that one of her grandchildren had annoyed her sufficiently that he was out of the will. She also left no doubt as to her feelings about her son's girlfriend: "Under no conditions will I ... allow Paul's 'girlfriend', Laurie ... to live in my house or to allow her to obtain an interest in my house, whether she and Paul get married or not ... 'Laurie" has been and still is a disruptive influence in our family relations".

73 Justice Ross also saw no merit in the argument that the testator gifted her estate to Irene and Paul:

> [22] The overall import of the Holograph Will is, in my view, not consistent with a transfer of ownership of the estate to Paul and Irene. Although the estate is left to them, there is no indication that it is to be for their exclusive benefit or their "property" as stated in the 2007 Holograph Codicil. They are directed to jointly

> manage the estate, not to receive it. While they can benefit from the estate, the only form of benefit expressly mentioned is salary. This suggests an entitlement to compensation for performing duties in relation to the estate, rather than ownership. It is noteworthy that there is another reference to salary in the Holograph Will where the testatrix indicates that Irene Hanson can access funds contributed by the testatrix to a joint account "to replenish her salary if it is necessary for her to take time off from her job to be able to look after my interests". This reference to salary clearly contemplates compensation for duties.
>
> [23] Another indicator that Paul and Irene are not given ownership of the estate is that they are not required to make all decisions in relation to the estate together. The Holograph Will does not assign shares to each of them; there was, for example, no provision that they should receive the estate in equal shares, nor in any particular percentages, as one would expect in the case of a gift.

74 The argument that the testator bestowed a power of appointment on Irene and Paul does not appeal to us.

75 Ms. Lubberts' historical will collection indicates that she is an independent person who calls a spade a spade and likes to be in control. The December 2, 2007 codicil provides ample evidence of the testator's strong desire to control what happens to her property:

> My house ... will become the property of my son ... and my daughter, Irene Lubberts-Hanson, my son to live in the house and take care of it -- he cannot rent or sell the house to non-family members. He may ... with Irene's consent sublet part of the house (e.g. the basement suite) but only to members of the immediate family.

76 Given that the testator had a strong controlling personality, the notion she would be willing to give anyone a power over her estate to do what the appointor thought appropriate is impossible to accept. As expected, there is no language in any of the historical wills or in the April 8, 2008 will that suggests she had any intention to bestow a power of appointment on Irene and Paul.

77 The Court concludes that the testator intended to create a trust. The parties agreed that if the Court concluded that the testator intended to create a trust, she failed in this enterprise. They agreed that the objects of the trust are uncertain. This will not be the first time that such a plan has failed for this reason. E.g., *Daniels v. Daniels Estate,* *120 A.R. 17*, 21 (C.A. 1991); *Re Madison Estate,* *[1997] A.J. No. 51* (Q.B.); *Klassen v. Klassen*, *[1986] 5 W.W.R. 746*, 757 (Sask. Q.B. 1986); *Re Olson Estate,* *67 Sask. R. 103* (Surr. Ct. 1988); *Re Gilkinson*, *38 O.W.N. 26*, 28 (H.C. 1930) aff'd *39 O.W.N. 115* (C.A. 1930); *Yeap Cheah Neo v. Ong Cheng Neo*, [1875] L.R. 6 P.C. 381 (Straits Settlement Penang). See generally *Marchuk v. Marchuk*, *52 W.W.R. 652*, 680 (Sask. Q.B. 1965) (those who entrust the drafting of important legal documents to nonlawyers needlessly risk disappointment and promote "family quarrels over the division of assets for years to come").

VII. Conclusion

78 The appeal is dismissed.

79 Both the appellants[44] and respondents shall have their costs on a full-indemnity basis from the estate.

T.W. WAKELING J.A.

E.I. PICARD and B.L. VELDHUIS JJ.A. (concurring)

80 We agree with the conclusion reached by Justice Wakeling that the decision of Justice Ross (*2012 ABQB 506*) is well written and carefully reasoned, and that this appeal must be dismissed. We find her decision sufficient to

dispose of all issues and thus, it is unnecessary to consider the other matters discussed in the memorandum of judgment of Justice Wakeling.

81 The appeal is dismissed. Costs shall be payable to both appellants and respondents, from the estate, on a full-indemnity basis.

Memorandum filed at Edmonton, Alberta this 25th day of June, 2014

E.I. PICARD J.A.
B.L. VELDHUIS J.A.

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1 The *Wills and Succession Act*, S.A. 2010, c. W-12.2 came into force on February 1, 2012. It does not apply to this case. The *Wills Act*, R.S.A. 2000, c. W-12 does, on account of s. 8(1) of the *Wills and Succession Act*. Ms. Lubberts died on December 20, 2009. The opinions expressed in parts III and IV. G of this judgment about the principles governing the interpretation of a will apply with equal force to a will subject to the new *Wills and Succession Act*.

Most appeals do not call upon the court to reconsider the merits of the governing standard. In this subset of appeals, the court's task is to apply an agreed upon governing standard to the facts. The disposition of the appeal does not alter the nature of the governing standard. This appeal does not fit squarely within this subclass. It gives the Court the opportunity to explain why the governing standard and related rules are sound. This is not a task which this Court, to my knowledge, has recently undertaken. The fact that the *Wills and Succession Act*, S.A. 2010, c. W-12.2 came into force only recently and adopts many of the norms at play in this appeal, warrants a fresh restatement of the values these norms promote. A knowledge of the underlying values, as Justice Cardozo has observed, "will count for the future". The Nature of the Judicial Process 165 (1921). See also Holmes, "The Path of the Law", 10 Harv. L. Rev. 457-469 (1897) ("a body of law is more rational ... when every rule it contains is referred articulately and definitely to an end which it subserves, and when the grounds for desiring that end are stated ... in words").

2 The Court appreciates that it must read the entire will before attaching a meaning to this portion of the will. *Re Tyhurst Estate,* [1932] S.C.R. 713, 716 ("In construing a will the duty of the court is to ascertain the intention of the testator, which intention is to be collected from the whole will taken together"); *Re Blackstock Estate,* 10 D.L.R. 2d 192, 196 (Sask. C.A. 1957) ("the duty of the court is to ascertain the intention of the testator from the entire will"); *Marchuk v. Marchuk,* 52 W.W.R. 652, 655 (Sask. Q.B. 1965) ("where a judge is asked to consider a particular portion of a will, it is his duty to look at the whole will"); *Re Mitchell Estate,* 2004 NSCA 149, para19 ("Regard must be had, not only to the whole of any clause in question, but to the will as a whole, which forms the context of the clause"); *Higgins v. Dawson*, [1902] A.C. 1, 3 (H.L. 1901) ("where you are construing a will ... you must look at the whole instrument ... and you cannot rely on one particular passage in it to the exclusion [of the rest of the will]"; *Re Donovan Estate,* 20 A. 3d 989, 992 (N.H. 2011) ("the clauses in a will are not read in isolation; rather their meaning is to be determined from the language of the will as a whole") & A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 167 (2012) ("The entirety of the document thus provides the context for each of its parts").

3 "A testator may make a valid will wholly by the testator's own handwriting and signature, without formality, and without the presence, attestation or signature of a witness". *Wills Act*, R.S.A. 2000, c. W-12, s. 7. Some jurisdictions do not give legal force to holograph wills. E.g., *Wills Act*, 1837, 1 Vict., c. 26, s. 9 (U.K.) ("No will shall be valid unless ... it is in writing and signed by the testator ... and ... the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and ... each witness ... attests and signs the will ... in the presence of the testator"); 12 Conn. Gen. Stat. ss.45a-251 (2011) ("a will or a codicil shall not be valid to pass any property unless it is in writing, subscribed by the testator and attested by two witnesses, each of them subscribing to the testator's presence; but any will executed according to the laws of the state or country where it was executed may be admitted to probate in this state and shall be effectual to pass any property of the testator situated in this state") & S.C. Code Ann. s.62-2-502 (2013) ("every will shall be ... (1) in writing; (2) signed by the testator or signed in the testator's name by some other individual in the testator's presence and by the testator's direction; and (3) signed by at least two individuals each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will").

4 Sometimes I will refer to Ms. Lubberts as the testator. The *Wills and Succession Act*, s. 1(1)(j) states that a "'testator' means an individual who makes a will. The term "testatrix" is "archaic". Black's Law Dictionary 1613 (9th ed. B. Garner

ed. 2009). See generally M. Asprey, Plain Language for Lawyers 169 (4th ed. 2010) (the author opposes the use of gender-specific words such as actress, manageress and waitress).

5 To increase readability, this judgment, other than portions which reproduce passages from the testator's wills or codicils, refers to Paul Johan Lubberts as "Paul" and Irene Lubberts Hanson as "Irene".

6 *2012 ABQB 506*, para40.

7 A party may submit extraneous evidence which it asserts will assist the court in ascertaining the intention of the testator. With one important qualification, the court may rely on relevant evidence which it concludes assists it to identify the testator's intention. A court cannot rely on extrinsic evidence that, in substance, conveys this message: the testator intended to give property A to BW. The parties agreed that the motions judge was entitled to take into account other testamentary instruments besides the April 8, 2008 holograph will. Reference to this evidence is appropriate. *Paton v. Ormerod*, 66 Law T.R. 381, 382 (Prob. 1892) ("Parol evidence is admissible to show what documents exist to which the recital may refer") & *Tassone v. Pearson, 2012 BCSC 1262*, para89 (the court admitted helpful evidence setting out the relationship between the testators and family members). I discuss the admissibility of extrinsic evidence below.

8 A "power is the authority that the owner of property can invest in another which gives the non-owner the legal right to use the property -- in short, a power is the authority to deal lawfully with the property of another". E. Gillese, The Law of Trusts 22 (3d ed. 2014). See also D. Waters, Waters' Law of Trusts in Canada 97 (4th ed. 2012) ("A power is the authority to handle or dispose of property which one does not own beneficially") & Gray, "Powers in Trust and Gifts Implied in Default of Appointment", 25 Harv. L. Rev. 1, 1 (1911) ("A power is an authority to deal with property apart from ownership. It is generally an authority to deal with property owned by some person other than the donee of the power").

9 There are many definitions of a trust. E. Keeton & L. Sheridan, The Law of Trusts 3 (12th ed. 1993) ("A trust is a relationship which arises whenever a person (called the trustee) is compelled in equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one, and who are termed beneficiaries) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustees, but to the beneficiaries or other objects of the trust"); G. Bogert, Trusts 1 (6th ed. 1987) ("A trust is a fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another") & Underhill, Trusts and Trustees 1 (4th ed. 1888) ("a trust is an equitable obligation, either expressly undertaken or constructively imposed by the Court, under which the ... trustee ... is bound to deal with certain property over which he has control (and which is called the trust property) for the benefit of certain persons (who are called the beneficiaries ...) of whom he may or may not himself be one").

10 *Marley v. Rawlings,* [2014] UKSC 2, paras19 & 20 (a court must study the words "in their documentary, factual and commercial context") & *San Antonio Area Foundation v. Lang,* 35 S.W. 3d 636, 639 (Tex. 2000) ("Determining a testatrix's intent ... requires a careful examination of the words used").

11 *Re Tyhurst Estate, [1932] S.C.R. 713*, 716 ("Every word is to be given its natural and ordinary meaning ... unless from a construction of the whole will it is evident that the testator intended otherwise") & A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 70 (2012) ("one should assume the contextually appropriate ordinary meaning unless there is reason to think otherwise").

12 *Marley v. Rawlings,* [2014] UKSC 2, paras19 & 20 & *Sealy (Western) Ltd. v. Upholsterers' International Union of North America, Local 34*, *20 L.A.C. 3d 45*, 48 (Wakeling 1985) ("The parties expect us to read fairly that to which they have agreed").

13 *Davis v. Anthony*, 384 S.W. 2d 60, 62 (Tenn. Ct. App. 1964) ("where the will ... was drafted by the testator himself who was not versed in the law and without legal assistance the court in arriving at the intention of the testator should construe the language of the will with liberality to effect what appears to be the testamentary purpose").

14 A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 56 (2012) ("words are given meaning by their context, and context includes the purpose of the text").

15 Ecclesiastical courts promoted testamentary disposition of personal property since the Norman conquest in 1066 and perhaps earlier. A person could not devise real property by will until the passage in 1540 of the *An Act how lands may be willed by Testament,* 32 Hen. 8, c.1. A. Oosterhoff, Oosterhoff on Wills and Succession 3 & 7 (7th ed. 2011).

16 *Wills and Succession Act*, *S.A. 2010, c. W-12.2*, Part 3.

17 *National Trust Co. v. Fleury,* [1965] S.C.R. 817, 829 ("the primary purpose is to determine the intention of the testator"); *Re Tyhurst,* [1932] S.C.R. 713, 716 ("in construing a will the duty of the court is to ascertain the intention of the testator"); *Estate of Martini v. Christensen,* 172 D.L.R. 4th 367, 371-72 (Alta. C.A. 1999) ("in interpreting a will a court should ... give effect to the testator's intentions as ascertained from the expressed language of the [will] ... and the surrounding circumstances"); *Haidl v. Sacher*, 106 D.L.R. 3d. 360, 368 (Sask. C.A. 1979) ("ascertaining the testator's true intention is the real and only purpose of the whole exercise"); *Rondel v. Robinson Estate,* 337 D.L.R. 4th 193, 201 (Ont. C.A. 2011) ("the task ... [of] a court of construction ... [is] to give effect to the testator's intentions"); *Re Bucovetsky,* [1943] 1 D.L.R. 208, 210 (Ont. H.C. 1942) ("The intention of the testator must always be the guide to the interpreter of wills") & J. MacKenzie, Feeney's Canadian Law of Wills s. 10.1 (4th ed. looseleaf issue 49 April 2014) ("the objective ... should be to determine the disposition of the property intended by the testator")

18 *Re Jebb*, [1966] Ch. 666, 672 (C.A. 1965) ("In construing this will, we have to look at it as the testator did, sitting in his armchair, with all the circumstances known to him at the time. Then we have to ask ourselves this question: 'What did he intend?' We ought not to answer this question by reference to any technical rules of law. Those technical rules have only too often led the courts astray in the construction of wills"); *Marley v. Rawlings,* [2014] UKSC 2, para20 ("whether the document ... is a commercial contract or a will, the aim is to identify the intention of the party or parties ... by interpreting the words used in their documentary, factual and commercial context"); *Perrin v. Morgan*, [1943] A.C. 399, 414 (H.L.) ("The sole object is ... to ascertain from the will the testator's intentions") & Kerridge & Rivers, "The Construction of Wills", 116 Law Q. Rev. 287, 292 (2000) ("The only question when interpreting a will, is what the testator intended by the words he used").

19 *Smith v. Bell,* 31 U.S. 68, 84 (1832) ("the intention of the testator [is] the polar star ... in the construction of wills"); *Re Donovan Estate,* 20 A. 3d 989, 992 (N.H. 2011) ("the testator's intent is our principal guide"); *Stewart v. Selder,* 473 S.W. 2d 3, 7 (Tex. 1971) ("The sense in which the words were used by the testator is the ultimate criterion"); *Chew v. Sheldon,* 108 N.E. 552, 553 (N.Y. 1915) ("his will should receive the most favorable construction to accomplish the purpose intended") & Stark, "Extrinsic Evidence and the Meaning of Wills in Texas", 31 Sw. L.J. 793, 794 (1977) ("the cardinal rule of law ... remains ... to effectuate the testator's expressed intent").

20 A survey of related foreign law often promotes a better understanding of the law of one's own jurisdiction. *See Marley v. Rawlings,* [2013] Ch. 271 (C.A. 2012) (the Court reviewed the law in Canada, Australia, New Zealand, New York and South Africa before concluding that "[w]hilst I have found a review of those international authorities illuminating, nothing in them causes me to change my provisional view") rev'd [2014] UKSC 2, para85 ("As frequently happens, the law north [Scotland] and south of the border [England and Wales] have something to learn from the other").

21 Dean Wigmore explained why the meaning of a unilateral act -- which is what a will is -- must be ascertained by use of a subjective standard: "When a person takes part in a bilateral act -- i.e. a transaction in which other persons share -- he must accept a common standard; he cannot claim to enforce his individual standard of meaning ... . The other party or parties are entitled to charge the speaker with the standard accepted in common. ... The principle is applicable, not only to deeds and contracts, but also to all bilateral transactions, including notices and demands -- though not of notices or other writings having a purely individual significance, to which rather the principle for wills ... would apply. ... But a unilateral act may be interpreted by the individual standard of the actor ... ; that is, after resorting to the ordinary sense of words, and the local sense of words. ... The will is the typical and almost the only instance of a unilateral act. The sense of the testator is therefore the ultimate criterion of interpretation." 9 J. Wigmore, Evidence in Trials at Common Law ss.2466 & 2467 (J. Chadbourn rev. 1981). An objective analysis, on the other hand, is adopted when attributing meaning to contractual terms which are the product of conscious choices made by more than one person. S. Waddams, The Law of Contracts 105 (6th ed. 2010) ("The principal function of the law of contracts is to protect reasonable expectations engendered by promises. It follows that the law is not so much concerned to carry out the will of the promisor as to protect the expectation of the promisee") & K. Lewison, The Interpretation of Contracts 19 (2004) ("the court is concerned to ascertain, not what is the intention of the actual parties to a contract, but what would have been the intention of the hypothetical reasonable parties, placed in the same position as the actual parties, and contracting in the words used by the actual parties"). Multiparty documents cannot have multiple meanings which are a function of the subjective understanding of each party. This is an unworkable legal condition. There must be an enforceable meaning attached to the oral or written language which the parties acknowledge captures their consensus. It must be the product of an objective inquiry. *Hobbs v. Esquimalt and Nanaimo Railway*, 29 S.C.R. 450, 468-69 (1889) ("it appears incredible that a ... land company ... would reasonably suppose that in dealings with third persons for the sale of land, the word 'land' means land with reservation of minerals"); *Gutheil v. Rural Municipality of Caledonia No. 99,* 48 D.L.R. 2d 628, 636 (Sask. Q.B. 1964) (the court ordered the municipality to convey title to surface rights and minerals because the municipality sales offer objectively assessed covered both); *Hallmark Pool Corp. v. Storey,* 144 D.L.R. 3d 56, 65 (N.B.C.A. 1983) ("we are not concerned [in contract interpretation] with the real intention or mental

state of Hallmark") & *Rickman v. Carstairs,* 110 Eng. Rep. 931, 935 (K.B. 1833) ("in ... cases of construction of written instruments [the question] is not what was the intention of the parties, but what is the meaning of the words used"). See also A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 30 (2012) ("Objective meaning is what we are after"). I am convinced that a will is a fundamentally different legal document than a multiparty legal document. This determination accounts for the commitment to a subjective analysis of the testator's intention. But it does not mean that most principles of interpretation do not apply to wills. See A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 51 (2012).

22 *Stewart v. Selder*, 473 S.W. 2d 3, 7-11 (Tex. 1971) (the Supreme Court extracted from extrinsic evidence the testator's family structure and the quality of these relationships).

23 *Moore v. Wardlow,* 522 S.W. 2d 522, 558-59 (Tex. Civ. App. 1975) (the court properly relied on extrinsic evidence which documented that the testator's "love for her grandsons continued without interruption until her death").

24 *Siegley v. Simpson,* 131 P. 479, 481 (Wash. 1913) (the Supreme Court relied on extrinsic evidence to determine that one claimant was a business associate and friend and the other claimant a person unknown to the testator).

25 *Eisert-Graydon Estate, 2003 ABQB 40* (extrinsic evidence that the testator was a conservationist led to the conclusion that she intended to establish a wildlife sanctuary).

26 The correct time is the date the testator made her will. *Boyes v. Cook*, 14 Ch. D. 53, 56 (1880 C.A.) ("You may place yourself ... in his arm-chair, and consider the circumstances by which he was surrounded when he made his will to assist you in arriving at his intention").

27 *Doe v. Dring,* 105 Eng. Rep. 447, 450 (K.B. 1814) ("If the Court were at liberty to look to extrinsic circumstances ... to the situation in which the testator stood with regard to his family, in order to see what disposition of his property he probably intended to make, they would undoubtedly be inclined to say that he must have intended to pass his real estate").

28 *Allgood v. Blake,* [1873] 8 Exch. 160, 162 ("the Court is entitled to put itself in the position of the testator, and to consider all material facts and circumstances known to the testator with reference to which he is to be taken to have used the words in the will") & *Blake v. Hawkins*, 98 U.S. 315, 324 (1878) ("The interpreter may place himself in the position occupied by the testator when he made the will, and from that standpoint discover what was intended").

29 There is general agreement that in some cases extraneous evidence is needed to identify more precisely an object or person referred to in a will. *Furlong Estate v. Memorial University of Newfoundland, 169 Nfld. & P.E.I.R. 99*, 103 (Nfld. Sup. Ct. Tr. Div. 1998) (the court reviewed a radio address given by the testator to gain some insight into his understanding of the time frame described by the words "relating to the discovery and early colonization of Newfoundland" which identified his books, maps and charts he wished the university to have on his death); *Kell v. Charmer,* 53 Eng. Rep. 76 (Ch. 1856) (the court admitted extrinsic evidence to ascertain the true meaning of jeweller trade symbols the testator used in his will) & *Goblet v. Beechy,* 57 Eng. Rep. 910 (Ch. 1829) (the court relied on the extrinsic evidence of eminent sculptors to ascertain the meaning of a trade word appearing in a sculptor's will).

30 *Re Powell*, *5 D.L.R. 2d 67* (Ont. H.C. 1956) (the court declined to consider extrinsic evidence disclosing the expanded meaning the testator gave to the word "cousin" because the word had a clear meaning at law); *Re Gale,* [1941] Ch. 209 (the court held that the mother of the testator's children was not entitled to the gifts made to her in the will of the man with whom she cohabited but to whom she was not married because the gift only came into effect "during her widowhood" which never occurred) & *Doe v. Dring,* 105 Eng. Rep. 447, 450 (K.B. 1814) (even though the court acknowledged that the testator intended the words "all and singular my effects" to bequeath his real property to the mother of his children, it declined to give legal effect to this wish because "effects" at law means personal effects).

31 Courts which applied this theory sometimes acknowledged that its application thwarted the execution of the will of the testator: "In the present case, if I were asked my private opinion as to what this testator really meant when he made use of the word [effects], I must suppose that he meant, that which his duty prescribed to him, to convey all his property for the maintenance of his family; *but* sitting in a Court of Law I am not at liberty to collect his meaning from matter dehors, but only from the expressions used on the face of the will". *Doe v. Dring,* 105 Eng. Rep. 447, 450 (K.B. 1814).

32 *Re Krezanosky Estate, 136 A.R. 317*, 319 (Q.B. 1992) ("evidence of surrounding circumstances is admissible to assist in the interpretation of a will, although the words used may not produce an ambiguous result"); *Re Connolly,* [1935] 2 D.L.R. 465, 472 (N.S. Sup. Ct.) (the motions judge properly admitted extrinsic evidence which demonstrated that the testator's reference to "children" meant stepchildren per Hall J.); *Long's Estate v. Long,* 61 A.P.R. 234, 241 (Nfld. Sup. Ct. Tr. Div. 1979) ("Where it is contended that a latent ambiguity exists, the court must admit the evidence for the purpose of making a ruling upon and where it appears that the evidence may be material, the practice of equity is to

admit it in the first instance and deal with its materiality upon the conclusion of the case"); *Re Theimer Estate,* 2012 BCSC 629, para50 ("the modern judicial approach ... is to admit all the evidence regarding the surrounding circumstances at the start of the hearing and then construe the will in light of those surrounding circumstances"); *Bergey v. Cassel,* 103 Man. R. 2d 202, 204 (Q.B. 1995) (the court rejected the argument that a court may resort to extrinsic evidence only if there is an ambiguity); *Paton v. Ormerod,* 66 Law T.R. 381, 382 (Prob. Div. 1892) ("Parol evidence of existing facts and circumstances outside the will is admissible, and in truth is in every case necessarily, though informally, admitted in order to apply the terms of the will to that to which they are intended to refer"); *Doe v. Martin,* 110 Eng. Rep. 645 (K.B. 1833) ("It may be laid down as a general rule that all facts relating to the subject matter and object of the devise ... are admissible to aid in interpreting what is meant by the words"); *Doe v. Holtom,* 111 Eng. Rep. 716, 718 (K.B. 1835) ("Some extrinsic evidence is necessary for the explanation of every will"); *Stewart & Selder,* 473 S.W. 2d 3, 8 (Tex. 1971) ("The extrinsic evidence set out below will be considered by us without regard to whether the will is ambiguous"); 9 J. Wigmore, Evidence in Trials at Common Law s.2470 (J. Chadbourn rev. 1981) ("a free resort to extrinsic matters for applying and enforcing the document [is inevitable]") & J. MacKenzie, Feeney's Canadian Law of Wills s.10.54 (4th ed. looseleaf issue 49 April 2014) ("the most recent trend in Canadian cases seems to indicate that evidence of surrounding circumstances should be taken into account in all cases before a court reaches any final determination of the meaning of words"). If the testator selected words which manifest her intention with precision, the likelihood that extraneous evidence will assist the court give effect to the testator's intention is reduced. *Stewart v. Selder,* 473 S.W. 2d 3, 19 (Tex. 1971).

33 A. Oosterhoff, Oosterhoff on Wills and Succession 491 (7th ed. 2011) ("Under this approach the court admits evidence of surrounding circumstances immediately, that is, when it starts to interpret the will").

34 *Marks v. Marks*, 40 S.C.R. 210, 212 & 220 (1908) ("we are bound to read his language in light of all the circumstances that surrounded, and were known to him when he used it and gave effect to the intention it discloses when so read" and "I prefer to read the ordinary meaning ... of the words used ... in light of surrounding circumstances in accordance with common sense" per Idington J); *Matheson v. Norman,* [1947] 1 D.L.R. 71, 73 (B.C. Sup. Ct. 1946) ("where the ambiguity is latent it must often be the case that its very existence can only be made apparent by the reception of parol evidence"); *Haidl v. Sacher,* 106 D.L.R. 3d 360, 368 (Sask. C.A. 1979) ("the learned Chambers Judge ... did not err in admitting evidence of the testator's relationship to the beneficiaries named in the will ... as part of the surrounding circumstances, in the light of which he then sought to interpret the testator's language by applying the 'ordinary meaning' rule"); *Therres v. Therres,* 2005 SKQB 209, para13 ("In determining the intention of the testator, the court examines the will and the surrounding circumstances as of the date of the execution of the will"); *Re Burke,* 20 D.L.R. 2d 396, 398 (Ont. C.A. 1959) ("Each Judge must endeavour to place himself in the position of the testator at the time when the last will and testament was made. He should concentrate ... on the circumstances ... which might reasonably be expected to influence the testator in the disposition of his property"); *Re Kaptyn Estate,* 2010 ONSC 4293, para35 ("Due weight should be given to such circumstances as were known to the testator insofar as they bear on the intention of the testator"); *Re Harmer*, 40 D.L.R. 2d 825, 832 (Ont. H.C. 1963) (the Court considered the nature of the testator's relationship with her husband's children to conclude that "grandchildren" referred to her husband's grandchildren, as she bore no children); *Furlong Estate v. Memorial University of Newfoundland,* 169 Nfld. & P.E.I.R. 99, 103 (Nfld. Sup. Ct. Tr. Div. 1998) (the court admitted opinion evidence of historians to establish a latent ambiguity in the description of a gift -- "books, maps and charts relating to the discovery and early colonization of Newfoundland"); *Kiren-Amgen Inc. v. Hoechst Marion Roussel Ltd.*, [2005] 1 All E.R. 667, 689 (H.L. 2004) ("No one has ever made an acontextual statement. There is always some context to any utterance, however meager"); *Re Wohlgemuth's Will Trusts,* [1948] 2 All E.R. 882, 886 (Ch.) (the court examined extraneous evidence to justify its conclusion that the testator's reference to "children" meant his illegitimate children"); *In re Ofner,* [1909] Ch. 60 (C.A. 1908) (the Court of Appeal's consideration of extrinsic evidence enabled it to conclude that the testator had misdescribed a grandnephew) & *In re Smith's Will,* 172 N.E. 499 (N.Y. 1930) (the Court of Appeals relied on extrinsic evidence to conclude that the testator's use of an unequivocal revocation clause did not apply to an earlier will regarding her New York property). See generally *McCullough v. Maryland*, 17 U.S. 316, 414 (1819) ("no one word conveys to the mind, in all situations, one single definite idea").

35 *Rondel v. Robinson Estate*, 337 D.L.R. 4th 193, 201 (Ont. C.A. 2011).

36 This opposition does not exist if extrinsic evidence and the text of the will produce two equally compelling interpretations. 9 J. Wigmore, Evidence in Trials at Common Law s.2472 (J. Chadbourn rev. 1981); A. Oosterhoff, Oosterhoff on Wills and Succession 500 (7th ed. 2011) ("Unless a statue provides otherwise, evidence of the testator's actual intention ... is admissible only if there is an equivocation") & *Elton v. Elton,* 292 Nfld. & P.E.I.R. 237, para25 (Nfld. C.A. 2010) ("It is clear ... that evidence of surrounding circumstances and facts does not extend to direct evidence of intent ... unless there is an equivocation, i.e., where the words of the will apply equally well to two or more persons or

things"). Contra *Connor v. Bruketa Estate, [2011] 3 W.W.R. 557* (Alta. Q.B.) ("[i]t is within the Court's discretion to admit ... [the testator's] handwritten instructions as extrinsic evidence of his intention").

37 With the passage of the *Administration of Justice Act, 1982*, c. 53, s. 21, the United Kingdom declared that a court may consider extraneous evidence of the testator's intention. *Marley v. Rawlings*, [2014] UKSC 2, para26 (a court may refer to what the testator "told the drafter of the will, or another person, or by what was in any notes he made or earlier drafts of the will which he may have approved or caused to be prepared"). This is also the effect in Alberta of the *Wills and Succession Act*, *S.A. 2010, c. W-12.2, s. 26*(c). A. Oosterhoff, Oosterhoff on Wills and Succession xi (7th ed. 2011). Section 3(3) of the *Wills and Succession Act* stipulates that "[f]or greater certainty, section 11 of the *Alberta Evidence Act* applies in respect of evidenced offered or taken in an application to the Court under this Act". Section 11 of the *Alberta Evidence Act*, *R.S.A. 2000, c. A-18* is in this form: "In an action by or against the heirs, next of kin, executors, administrators or assigns of a deceased person, an opposed or interested party shall not obtain a verdict, judgment or decision on that party's own evidence in respect of any matter occurring before the death of the deceased person, unless the evidence is corroborated by other material evidence". See A. Wakeling, Corroboration in Canadian Law 131-32 (1977). Some Alberta courts considered evidence of the testator's intention with respect to specific objects before the *Wills and Succession Act* came into force. *Connor v. Bruketa*, *[2011] 3 W.W.R. 557*, 570 (Alta. Q.B. 2010) ("It is within the Court's discretion to admit ... [the testator's] handwritten instructions as extrinsic evidence of his intention") & *Eisert-Graydon Estate*, *2003 ABQB 40*, para36 (the court relied on the testator's written directions to her solicitor declaring that she wished to preserve her property as wildlife sanctuaries).

38 In this context "or" means "and". There is no good reason to conclude that the testator intended her property to be for the benefit of only one of her children or grandchildren. Had a valid trust been created, the trustees could have lawfully given some of the trust property to any or all of the testator's children or grandchildren. See J. MacKenzie, Feeney's Canadian Law of Wills s.11.22 (4th ed. looseleaf issue 49 April 2014) ("The courts do not hesitate, where the context requires it, to construe 'or' as if it was 'and'").

39 There are no words which must be used to evidence an intention to create a trust. G. Bogert, Trusts 25 (6th ed. 1987) ("No formal or technical expressions are required"). But the words used must lead the court to conclude that a person intended to establish a trust. *Tassone v. Pearson, 2012 BCSC 1262*, para31 ("The mere fact that the power is given to a trustee is not alone determinative of whether it is a true power or power of appointment") & *Boreing v. Faris,* 104 S.W. 1022, 1024 (Ky. 1907) (the fact that the settlor used the word "committee" instead of "trustee" was not determinative).

40 In the 2007 holograph codicil the testator employed gift language: "no cash amount will go to my grandchildren ($4000.00 per grandchild was left to each of my grandchildren, since I have on [their] ... birthdays ... given each of them amounts of money) and no cash money to be left to any other persons mentioned in the will, since these *gifts* have been carried out already in the last number of years ... ." (emphasis added).

41 It would have been unnecessary. While it is unclear at law that Irene would have become the legal and equitable owner of the funds in the joint account on her mother's death, it is obvious that the testator assumed this would be the result. See *Lowe Estate v. Lowe*, *2014 ONSC 2436*, para20 ("where a person gratuitously adds another's name as owner of a bank account with right of survivorship, the transferee must rebut the presumption of resulting trust by proving that it was *not* the transferor's intentions that the funds from the joint account flow to the estate on the transferor's date of death").

42 Had the testator's August 8, 2008 will consisted of only these few words -- "My entire estate ... , I leave to my son ... and my youngest daughter" -- the Court could have concluded that Ms. Lubberts' will gifted her estate to Irene and Paul. The word "leave" may mean "bequeath, devise <left a fortune to his wife>." Webster's Third New International Dictionary of the English Language Unabridged 1287 (1971). See also Black's Law Dictionary 973 (9th ed. B. Garner ed. in chief 2009) ("1. To give by will; to bequeath or devise <she left her ranch to her stepson>. This usage has historically been considered loose by the courts and it is not always given testamentary effect").

43 Justice Scalia and Professor Garner emphasise the importance of textual harmonization: "The imperative of harmony among provisions is more categorical than most canons of construction because it is invariably true that intelligent drafters do not contradict themselves ... . Hence there can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously". Reading Law: The Interpretation of Legal Texts 180 (2012).

44 This dispute was directly attributable to the fact that the testator chose to draft her will without the assistance of a lawyer and utilized unclear language. There is sufficient merit in the appellants' case to justify an order directing the estate to pay the appellants' costs on a full-indemnity basis. *Dice v. Dice Estate, 351 D.L.R. 4th 646*, 665 (Ont. C.A. 2012) ("As the issues on appeal arose from the wording of the will, I would order that the costs of all parties ... be paid by the Estate"); *Re Wigle, 27 O.W.N. 357*, 358 (H.C. 1924) ("There is just enough doubt to give him his costs out of the

estate") & *Furlong Estate v. Memorial University of Newfoundland*, *[1999] N.J. No. 292* (Nfld. C.A.) (the appeal court ordered that the costs before the trial and appeal courts be paid by the estate on a solicitor-and-client basis).

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Valard Construction Ltd. v. Bird Construction Co., [2016] A.J. No. 859

Alberta Judgments

Alberta Court of Appeal

P.A. Rowbotham, T.W. Wakeling and F.L. Schutz JJ.A.

Heard: April 5, 2016.

Judgment: August 29, 2016.

Docket: 1503-0074-AC

Registry: Edmonton

[2016] A.J. No. 859 | 2016 ABCA 249 | 269 A.C.W.S. (3d) 673 | [2017] 2 W.W.R. 46 | 57 C.L.R. (4th) 171 | 42 Alta. L.R. (6th) 223 | 2016 CarswellAlta 1584

Between Valard Construction Ltd., Appellant, (Plaintiff), and Bird Construction Company, Respondent, (Defendant)

(219 paras.)

Case Summary

Construction law — Liability — Of contractors and subcontractors — Duties — Contractor to subcontractor — Duty to inform — Appeal by construction company from dismissal of action for breach of fiduciary duty and costs award allowed in part — Appellant supplied labour and materials to construction site through its contract with subcontractor hired by respondent — Subcontractor did not pay appellant and was insolvent — Appellant inquired about labour and material payment bond one year after non-payment, then made claim, which was too late — Respondent had no legal duty to inform appellant about existence of labour and material payment bond until appellant asked — Award of indemnity costs was not justified as appellant's claim was not a proceeding to enforce provisions of bond.

Appeal by a construction company from the dismissal of its claim for breach of fiduciary duty and the award of costs. The appellant supplied labour and materials to a construction site owned by Suncor Energy, through its contract with Langford Electric, hired by the respondent. As required, the subcontractor secured a labour and material payment bond naming the respondent as trustee. The respondent did not take any steps to bring the bond to the attention of the appellant and the appellant had not asked about the bond. The subcontractor had not paid the appellant and was insolvent. Although the subcontractor advised the respondent in August 2009, that the appellant was requesting more money for the work it had done, the appellant did not send any of the appellant's time and materials sheets or invoices to the respondent or the owner and did not advise the respondent or the owner of the outstanding account until April 2010. At that time, the appellant asked whether the subcontractor had provided a labour and material payment bond. The appellant's claim to the bonding company surety under the labour and material payment bond was made too late. The appellant then sued the respondent for the limit under the bond alleging that it breached its duties as bond trustee. The trial judge found that it was not significant that the respondent knew in August 2009 that the appellant wanted additional money from the subcontractor because the respondent was not made aware until April 2010 that the appellant had not been paid. He also found that, having heard nothing further, the respondent was entitled to assume that the subcontractor and the appellant had worked out their differences. He further found that the respondent acted honestly at all material times and had no knowledge of the fact that the appellant was a claimant who had not been paid. The appellant appealed arguing that the respondent had a separate, positive and enforceable legal duty to inform the appellant of the existence of any labour and material payment bond so that it could make a timely claim and that the respondent failed to fulfill its legal duty, which prevented the appellant from making a

timely claim to the bonding company surety.

HELD: Appeal allowed in part.

The respondent did not have a legal duty to inform the appellant of the existence of the labour and material payment bond. The appellant was a large, experienced and sophisticated contractor. Its project manager knew about labour and material payment bonds. It had the means to legally compel the respondent to provide information about the bond, but elected not to make inquiries. Moreover, the respondent was not in a fiduciary relationship with the appellant. An award of indemnity costs was not justified as the appellant's claim was not a proceeding to enforce the provisions of a bond.

Statutes, Regulations and Rules Cited:

Builders' Lien Act, *R.S.A. 2000, c. B-7, s. 20*, s. 33, s. 33(1), s. 41(2)

Public Works Act, *R.S.A. 2000, c. P-46, s. 17*

Trustee Act, *R.S.A. 2000, c. T-8, s. 41*

Appeal From:

On appeal from the Judgment by the Honourable Mr. Justice G.A. Verville Dated the 27th day of February, 2015, Filed on the 12th day of March, 2015 (*2015 ABQB 141*, Docket: 1003 11170).

Counsel

M.D. Preston/C.J. Moore, for the Appellant.

P.V. Stocco, for the Respondent.

Reasons for Judgment Reserved

Reasons for judgment were delivered by F.L. Schutz J.A., concurred in by P.A. Rowbotham J.A. Separate dissenting reasons were delivered by T.W. Wakeling J.A.

F.L. SCHUTZ J.A.

Introduction

1 The parties agree that there are two issues on appeal: is the respondent legally liable for failing to inform the

appellant of the existence of a labour and material payment bond, and was the trial court's indemnity costs award justified?

2 "[L]egal truth can usually be found only in the details": ***Froese v Montreal Trust Co of Canada***, *[1996] BCJ No 1091* (CA) at para 50, *137 DLR (4th) 725*.

Facts

3 Suncor Energy owned the construction site at which the appellant supplied labour and materials, through its contract with Langford Electric Ltd, the subcontractor hired by the respondent. Subcontractor Langford did not pay the appellant and is insolvent.

4 The appellant is a large construction company with between 500 to 600 employees and is active across Canada. The appellant has its own surety and bonding facility (Respondent's Extracts of Key Evidence ["REKE"] at p R2, Trial Transcript ["TT"] p 69, l 18 - p R3, TT p 70, l 1).

5 The appellant's trial witness was its project manager, who was responsible for the appellant's account with Langford. The project manager was aware of how labour and material payment bonds worked, as well as the terms and notice provisions in labour and material payment bonds, and he had previously made a claim on a labour and material payment bond (Appellant's Extracts of Key Evidence ["AEKE"] at p A1, TT p 40, ll 30-37; REKE at p R2-R3, TT p 69, l 41 - p 70, l 6).

6 The record discloses the following:

* The project manager failed to request a copy of the prime contract between the respondent and site owner Suncor, failed to request a copy of the contract between the respondent and Langford, and failed to ask whether or not payment security had been provided (REKE at p R4, TT p 44, ll 1-9);
* The project manager was aware that the respondent was working with site owner Suncor, and no one prevented him from asking the respondent about its contract with Suncor or its subcontract with Langford (REKE at p R5, TT p 71, ll 3-29);
* The project manager did not send to the respondent a copy of the appellant's subcontract or purchase order with Langford (REKE at p R6, TT p 72, ll 7-16);
* The project manager did not send any of the appellant's time and materials sheets or invoices to the respondent and/or Suncor, and he never advised the respondent of the magnitude of the appellant's outstanding account (REKE at p R7, TT p 75, ll 16-28; p R8, TT p 87, ll 23-31; p R9, TT 74, ll 23-32);
* Despite being under internal pressure since 2009 about the unpaid Langford account, the project manager failed to advise the respondent and/or Suncor about the appellant's outstanding account with Langford until April 19, 2010 (REKE at p R10, TT p 78, ll 23-41; p R11, TT p 79, ll 1-21; R18, TT p 83, ll 7-10).

7 By email dated August 10, 2009, Langford advised the respondent that the appellant was requesting more money for the work it had done than Suncor was willing to pay. The respondent replied that it would be impossible to get more money from Suncor, and that Suncor was already upset with the respondent's last claim (AEKE A32). By email dated October 2, 2009, sent by the appellant's project manager to his contact at Langford, the project manager stated that the outstanding Langford account was "going to be a hot topic." By email dated December 9, 2009, the project manager reiterated to his contact at Langford that he was in "extremely deep trouble over this account." Yet, the project manager decided to not "rock the boat" by alerting the respondent and/or Suncor to the appellant's outstanding account with Langford (REKE at p R11, TT 79, ll 1-9; R12-R16; p R17, TT p 81, ll 1-25; p R18, TT p 83, ll 7-10).

8 It was not until April 19, 2010, that the respondent received from the appellant backup documentation regarding the outstanding balance being claimed by the appellant (REKE at p R19, TT p 85, ll 21-27; p R20, TT p 122, ll 4-29; p R21, TT p 123, ll 1-24; p R22, TT p 135, ll 4-10; p R23, TT p 126, ll 23-36).

9 The April 19, 2010 communication from the appellant's project manager to the respondent was the first communication in which the appellant asked the respondent whether Langford had provided a labour and material payment bond (REKE at p R24, TT p 104, ll 7-39).

10 The appellant's claim to the bonding company surety under the labour and material payment bond was made too late. Although the appellant initially sued the bonding company surety, it later discontinued that lawsuit. The respondent is the sole remaining defendant.

Standard of Review

11 The parties agree that the issues on appeal raise questions of law, for which the standard of review is correctness. Fact findings of the trial court are entitled to deference, on a standard of palpable and overriding error.

Analysis

Findings of Fact

12 The trial court made two crucial findings of fact: first, it was not significant that the respondent knew in August of 2009 that the appellant wanted additional money from Langford because the respondent was not made aware until April 19, 2010 that the appellant had not been paid; second, having heard nothing further, the respondent was entitled to assume that Langford and the appellant had worked out their differences. I discern no error in these findings of fact, much less palpable and overriding error.

Wording of the Labour and Material Payment Bond

13 In the labour and material payment bond, the respondent is the "Obligee/Trustee", the "Principal" is the insolvent subcontractor Langford, with whom the appellant subcontracted, and the "Claimant" is the appellant. The "Surety" is the issuing bond company. The labour and material payment bond says, in part:

> The Principal and the Surety, hereby jointly and severally agree with the Obligee, as Trustee, that every Claimant who has not been paid as provided for under the terms of its contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of its contract with the Principal and have execution thereon. Provided that the Obligee is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Obligee or by joining the Obligee as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless the Obligee against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligee by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Obligee to sue on and enforce the provisions of this Bond. (AEKE at P A42, Condition #2)

14 The labour and material payment bond in issue is the CCDC 222-2002 form published by the Canadian Construction Documents Committee in 2002, and has been in use since. The wording of this form of labour and material payment bond has been judicially considered by the Supreme Court of Canada: ***Johns-Manville Canada***

Inc v John Carlo Ltd, *[1983] 1 SCR 513*, *147 DLR (3d) 593*. The wording is intended to create a limited trust, as is necessary to circumvent the third-party beneficiary rule that would otherwise preclude a non-party entity from claiming any rights under the bond. At the time such labour and material payment bonds issue, the identity of all potential claimants is not known. ***Johns-Manville Canada Inc*** at paras 5, 11; ***Dawson Construction Ltd v Victoria Insurance Co of Canada*** *[1986] BCJ No 1959* (BCSC) at paras 15-19; ***Harris Steel Ltd v Alta Surety Co*** *(1993), 6 CLR (2d) 55* (NSSC(AD)), at paras 19-20.

15 The bond's wording is explicit that the respondent obligee/trustee is not obliged to do or take any act, action or proceeding against the surety on behalf of the claimants to enforce the provisions of the bond. And, the bond imposes no positive obligations of any other kind upon the respondent. Without more, the obligations of parties to a labour and material payment bond are established by the wording of the bond: ***Johns-Manville Canada Inc*** at para 17.

16 But, the appellant urges that the respondent had a separate, positive and enforceable legal duty to inform the appellant of the existence of the labour and material payment bond so that the appellant could make a timely claim to the bonding company surety. The appellant contends that the respondent failed to fulfill its legal duty and it is this failure that prevented the appellant from making a timely claim to the bonding company surety.

17 The appellant will succeed only if this Court concludes that the respondent owed the appellant a legal duty to inform, a duty that must be found outside of the wording of the bond; further, this Court must conclude that the respondent breached its legal duty and, finally, that the appellant has established the requisite causal connection between the respondent's breach and the appellant's alleged damages.

Did the Respondent Have a Legal Duty to Inform?

18 The appellant submits that the respondent's legal duty to inform is found in ***Hawkesley v May***, [1956] 1 QB 304, and ***Brittlebank v Goodwin*** (1868), LR 5 Eq 545, cases which speak to the obligations of trustees in other circumstances; or, the respondent's legal duty to inform can be found elsewhere, within the law of fiduciary obligations.

19 The appellant is a large, experienced and sophisticated contractor. Its project manager knew about labour and material payment bonds, although he had neither seen nor been asked to post such a bond in his roughly 10 years working in the oil sands, as either a general contractor or subcontractor.

20 The trial judge found as a fact that the appellant took no reasonable steps prior to April 19, 2010 to inquire about or to learn of the existence of the labour and material payment bond. The appellant's project manager testified that positive steps to obtain knowledge of the existence of the bond were deliberately not taken, as he did not want to "rock the boat" with the respondent (and, by implication, site owner Suncor), despite having ". . . already encountered problems with invoices rendered to Langford at the time it left the Project site on May 20, 2009" (Reasons, para 86).

21 The trial court found that the respondent's representatives acted honestly at all material times and had no knowledge of the fact that the appellant was a claimant who had not been paid as provided for under the terms of its contract with Langford (Reasons, para 87).

22 On April 19, 2010, when the appellant's project manager asked the respondent for information about the labour and material payment bond, the respondent provided that information. Given that the primary objective of a labour and material payment bond is to insulate a general contractor in the place of the respondent from being brought into unpaid sub-subcontractors builders' lien litigation, and further given that any failure on the part of the respondent to supply such information when requested is actionable under Alberta's *Builders' Lien Act*, *RSA 2000, c B-7*, no advantage was to be gained by the respondent in not providing information about the bond to the appellant, when asked.

23 Canadian courts have rejected the appellant's proposition that the trustee/obligee under a labour and material payment bond has a positive legal duty to take steps to bring the existence of a labour and material payment bond to the attention of potential claimants.

24 ***Dominion Bridge Co v Marla Construction Co***, *[1970] 3 OR 125* (Ont Co Ct) at para 20, 1970 CarswellOnt 743, rejected the proposition that the obligee/trustee under a labour and material payment bond had a duty to "seek out" a potential claimant and advise the claimant of the existence of the bond, and said: "[n]o such duty is imposed by the bond itself. In the absence of applicable authority I would not imply such a duty in law."

25 ***Dominion*** at paras 19-20 specifically rejected the cases of ***Hawkesley*** and ***Brittlebank***, because these cases dealt with the duty owing to infants in respect of trusts to their benefit, and did not apply in the context of a construction industry labour and material payment bond. ***Dolvin Mechanical Contractors Ltd v Trisura Guaranty Co***, *2014 ONSC 918*, *2014 CarswellOnt 4708*, recently applied ***Dominion***, in a case that is factually analogous to this appeal.

26 The appellant does not dispute the fact that it had the means to legally compel the respondent to provide information about a bond under s 33 of Alberta's *Builders' Lien Act*. Nor does it suggest ignorance of its general rights under a labour and material payment bond, or the need for timely notice to be given under such an instrument. The appellant's knowledge and ability to independently, legally compel information from entities it explicitly knew possessed the ability to confirm or refute the existence of a bond, in circumstances where the appellant was aware of the possibility that such a bond may exist, wholly distinguishes the appellant's situation from that of an infant who has no means whatsoever of learning of the existence of a trust in their favour, *except and unless* the trustee informs them of the trust's existence. Infant beneficiaries ignorant of a trust will necessarily remain ignorant, by force of circumstance, until informed otherwise by some person completely unknown to them. In contrast, the appellant remained ignorant of the existence of its entitlement to claim under this specific labour and material payment bond because the appellant *elected* not to make inquiries, all the while knowing that such inquiries would definitively confirm or refute the existence of a bond. In sum, the infant beneficiaries possessed no independent ability to obtain necessary information; the appellant did.

27 Moreover, the respondent was not in a fiduciary relationship with the appellant. When discussing fiduciary obligations in ***Hodgkinson v Simms***, *[1994] 3 SCR 377* at para 40, *1994 Carswell BC 438*, the Supreme Court of Canada sharply contrasts arm's length commercial relationships that are characterized by self-interest, with relationships giving rise to fiduciary duties. ". . . [T]he precise legal or equitable duties the law will enforce in any given relationship are tailored to the legal and practical incidents of a particular relationship;" and "[t]here is no substitute in this branch of the law for a 'meticulous examination of the facts' [citation omitted]": ***Hodgkinson*** at para 37. Here, again, the appellant possessed the independent, arm's length, and statutorily-compelled power to obtain complete information about the labour and material payment bond throughout the duration of its sub-subcontracting work on the Suncor site, and thereafter. This fact entirely removes the appellant from Canadian law that affords protections to those who are found to be in reliance-based relationships. In no sense can it be said that the appellant was legally dependent upon another (the respondent) who had agreed to relinquish self-interest and act solely on behalf of the appellant. The trial judge's findings of fact on this issue are unassailable. I decline to find that the relationship between the appellant and the respondent was, in any sense, reliance-based. The law of fiduciary obligations does not assist the appellant.

28 The Canadian cases offered by the respondent are sound in law and principle. In Alberta, a contractor in the position of the respondent has no legal duty to inform any potential claimant about the existence of a labour and material payment bond, unless and until a clear and unequivocal request for information about the bond is made. Alberta's *Builders' Lien Act* provides the method for a potential claimant - a lienholder - to make a demand for information, and imposes consequences upon those who fail to promptly comply with such a demand.

29 Finally, the appellant contends that the respondent ought to have taken certain particular steps, including posting the bond in its jobsite trailer, and argues this would not have been an onerous undertaking. Assuming

without deciding that posting labour and material payment bonds to the worksite trailer notice board would not be an onerous undertaking, neither the common law nor Alberta's *Builders' Lien Act* imposes any such legal duty upon the respondent. Although s 20 of Alberta's *Builders' Lien Act* and s 17 of the *Public Works Act*, RSA 2000, c P-46 impose obligations to display certain information in a conspicuous place, neither statutory provision applies to this case. And, I do not agree that either statutory provision reflects a codification of the common law extant.

30 The respondent did not owe a legal duty to inform the appellant of the existence of the labour and material payment bond, irrespective of howsoever such duty might be satisfied, until the respondent was specifically asked by the appellant about the existence of a labour and material payment bond. That specific request was made by the appellant on April 19, 2010. The respondent answered the appellant's specific request.

31 Accordingly, this ground of appeal is dismissed.

***Is the Costs Award Against the Appellant Justified*?**

32 In the same lawsuit, the appellant sued the respondent and the bonding company surety.

33 I agree that there is no indication in the bond's wording in Condition #2 that would restrict the indemnity provision only to situations where the respondent is added as a plaintiff. I do not agree, however, that the appellant's claim against the respondent is "a proceeding to enforce the provisions of the bond." Rather, the appellant's claim against the respondent is for breaching its alleged *sui generis* legal duty to inform the appellant of the *existence* of the bond.

34 An award of indemnity costs is not justified, and the appeal on this ground is allowed.

35 Failing agreement, the parties may seek a costs direction by filing brief written materials within 60 days hereof.

Reasons filed at Edmonton, Alberta this 29th day of August, 2016

F.L. SCHUTZ J.A.
P.A. ROWBOTHAM J.A.:— I concur

Dissenting Reasons for Judgment Reserved

T.W. WAKELING J.A. (dissenting)

I. Introduction

36 This is a business trust case. It presents an important issue that no Canadian appellate court has previously resolved.

II. Questions Presented

37 A construction contract between Bird Construction Company and Langford Electric Ltd. contained a term obliging the latter to secure a labour and material payment bond for the benefit of those that worked on a designated Suncor Energy Inc. project under contract with Langford Electric.

38 Langford Electric purchased the requisite bond from the Guarantee Company of North America and delivered the bond to Bird Construction. The bond named Bird Construction as the trustee.

39 Bird Construction took no steps to bring the existence of the bond to the attention of potential beneficiaries in a timely manner.

40 Valard Construction, a creditor of Langford Electric on account of work performed on the Suncor project and a bond beneficiary, only learned of the bond's existence after the period during which Valard Construction could claim against the Guarantee Company had expired.

41 Langford Electric is now judgment proof.

42 Valard Construction sued Bird Construction for the limit under the bond alleging that the defendant breached its duties as the bond trustee to Valard Construction, a bond beneficiary.

43 Did Bird Construction, as the bond trustee, have a duty to notify Valard Construction in a timely manner that the bond existed? If not, did it have a duty to take reasonable steps to bring the bond to the attention of Valard Construction?

44 If Bird Construction had one of these duties, did Bird Construction notify Valard Construction in a timely manner of the bond's existence or take reasonable steps to bring the bond to the attention of Valard Construction?

45 Did Valard Construction take reasonable steps to determine if a labour and material payment bond that it might be able to claim on existed?

46 Should Valard Construction, as soon as it realized that Langford Electric's account was overdue, have invoked its rights under the *Builders' Lien Act*[1] and asked Suncor and Bird Construction for a copy of the construction contracts between the owner and Bird Construction and Bird Construction and Langford Electric?

47 If Valard Construction did not take reasonable steps to determine if a labour and performance bond existed, what is the legal effect of this omission?

48 Bird Construction claims that the bond obliges Valard Construction to indemnify the former for the costs it incurred in defending the latter's breach-of-trust action. Does it?

III. Brief Answers

49 A trustee, whether under a business trust or any other kind of trust, is a fiduciary and has onerous obligations as a fiduciary.

50 As a general rule, if a beneficiary or a potential beneficiary would derive a benefit from knowing that a trust exists and the criteria identifying a beneficiary, a trustee must undertake reasonable measures to make available to a sufficiently large segment of the class of beneficiaries or potential beneficiaries information about the trust's existence and the criteria identifying a beneficiary. This obligation increases the likelihood that beneficiaries or potential beneficiaries will be able to take the necessary steps to protect any interests they may have under the trust. In determining what constitutes a sufficiently large segment of the class of beneficiaries or potential beneficiaries and the related question, what measures are reasonable to make available information about the existence of the trust, a court must take into account the criteria identifying a beneficiary, the nature of the benefits a beneficiary may enjoy and the costs associated with different communication methods.

51 Valard Construction and other potential beneficiaries would have derived a substantial benefit from knowing that the bond existed and the criteria identifying those who were beneficiaries under the bond. Had Valard Construction known about the bond before the expiry of the 120 day period following the date it last performed work under its contract with Langford Electric, it would have made a timely claim against the Guarantee Company for payment of the outstanding Langford Electric invoices.

52 Bird Construction, as the bond trustee, had to take reasonable measures to make available to a sufficiently large segment of potential beneficiaries information about the bond's existence and the criteria identifying a beneficiary.

53 In this case, a sufficiently large segment of beneficiaries or potential beneficiaries is all beneficiaries or the potential beneficiaries. The criteria identifying potential beneficiaries are clear. The benefits of being a beneficiary are high - up to $659,671. And the costs of a communications strategy designed to bring the bond's existence to the attention of all undertakings that did business with Langford Electric was relatively low.

54 In this case reasonable communication measures have to take into account the possibility that businesses having construction agreements with Langford Electric may be able to discharge their obligations to Langford Electric without sending personnel to the Suncor project site. What constitutes reasonable measures for one group may not be adequate for the other group.

55 Posting a copy of the bond at Bird Construction's Suncor site office where meetings attended by contractors were regularly held would constitute a reasonable measure for those who had contracts with Langford Electric and worked on the Suncor project site. While it is possible that some contractors who worked on site may not check the bulletin board, this is not a risk that Bird Construction should have to bear. A trustee need only take reasonable measures designed to make information *available* about the bond's existence to potential beneficiaries or beneficiaries. A trustee is not under an obligation to ensure that every potential beneficiary or beneficiary actually receives notice of the bond's existence.

56 The likelihood that the bond-posting strategy would have the potential to reach all potential beneficiaries or beneficiaries who did not visit the Suncor project site is too low to make it a reasonable measure for this group.

57 To achieve adequate disclosure for this segment of the class Bird Construction would have to adopt protocols that have the potential to disseminate information about the bond to those enterprises with whom Langford Electric did business but were able to discharge their Suncor project obligation without attending the site.

58 Two options are obvious. First, Bird Construction may insist that Langford Electric include in its contracts with subcontractors a provision that discloses the bond's existence and requires the subcontractor to notify Bird Construction in writing that it acknowledges receiving notice of the bond's existence. Second, Bird Construction may demand that Langford Electric provide it in a timely manner with a list of all subcontractors that it has retained to work on the Suncor project. Bird Construction would then have an obligation to take reasonable steps to communicate to this group the bond's existence.

59 The cost of these measures would be negligible.

60 Bird Construction took no steps whatsoever to notify Valard Construction of the existence of the bond when the latter would have benefitted from such knowledge. The trustee disclosed the bond's existence only when Valard Construction asked about it and it was too late for Valard Construction to file a claim as a bond beneficiary.

61 Bird Construction failed to discharge its obligation as the bond trustee.

62 It is responsible for the damages that Valard Construction, a bond beneficiary, suffered as a result of its failure to discharge its obligations as the bond trustee.

63 Whether Valard Construction did or did not take reasonable measures to determine if a labour and performance bond existed is irrelevant. Bird Construction did not plead laches as a defence or invoke s. 41 of the *Trustee Act*.[2] This means that the reasons why Valard Construction failed to discover before April 19, 2010 the existence of the bond are irrelevant. The nature of Bird Construction's duty as bond trustee is not affected by the conduct of a beneficiary.

64 Valard Construction has no obligation to indemnify Bird Construction for the costs Bird Construction incurs in defending Valard Construction's breach-of-trust action. The board's indemnification provision does not apply when Bird Construction is the defendant in a breach-of-trust lawsuit.

IV. Statement of Facts

65 Suncor retained Bird Construction as its general contractor for a project at its Fort McMurray oil sands site.[3]

66 Bird Construction entered into a contract with Langford Electric dated October 20, 2008.[4] The latter agreed to perform designated electrical work on the project. Another term of this contract required Langford Electric to secure a labour and material payment bond. Bird Construction had a policy that required any enterprise with which it had a contract for an amount in excess of $100,000 to perform project work to post a labour and material payment bond.[5]

67 On November 25, 2008 Langford Electric secured from the Guarantee Company[6] a labour and performance bond for $659,671.[7] This is a standard form contract - Standard Construction Document CCPC 222-2002.[8] Langford Electric subsequently provided Bird Construction with a copy of the bond. Bird Construction did not post the bond at the work site or take any other steps to bring its existence to the attention of potential bond beneficiaries. The bond trustee just filed it.[9]

68 On March 2, 2009 Langford Electric retained Valard Construction to perform some needed Suncor project services.[10]

69 Valard Construction is a utility contractor with 500 to 600 employees in Canada. It has its own surety bonding company.[11]

70 Valard Construction worked on the Suncor project from March 17, 2009 to May 20, 2009 inclusive.[12] It encountered unforeseen difficulties. This required extra work and increased the cost of its services substantially.

71 Langford Electric failed to pay all of Valard Construction's invoices.[13]

72 John Cameron Wemyss, Valard Construction's project manager, did not notify Suncor or Bird Construction that Langford Electric had not paid its accounts.[14] The project manager was reluctant to "rock the boat".[15] Companies that worked on oilsands projects had to have good working relationships.[16]

73 Mr. Wemyss was familiar with labour and material payment bonds.[17] He had previously claimed against a surety for an unpaid account.

74 On February 11, 2010 Valard Construction commenced an action against Langford Electric for its unpaid invoices in the Court of Queen's Bench of Alberta.[18]

75 On March 9, 2010 the Court of Queen's Bench of Alberta granted Valard Construction default judgment for $660,000.17.[19]

76 On April 19, 2010 Mr. Wemyss, having heard that there might be a bond, contacted Bird Construction, notified it that Langford Electric owed Valard Construction a large sum and asked if such a bond existed.[20]

77 Bird Construction immediately indicated that there was a bond and gave Mr. Wemyss the bond issuer's contact information.[21]

78 On April 19, 2010 Valard Construction submitted a bond claim to the Guarantee Company.[22]

79 The existence of a labour and material payment bond surprised Mr. Wemyss.[23] He had been in the construction

industry for over ten years and had never encountered a labour and material payment bond on an oilsands project. Bonds were a standard feature in public projects.

80 In addition, the contract between Langford Electric and Valard Construction, made no mention of a labour and material payment bond. Nor had Mr. Wemyss ever seen a copy of the bond posted anywhere on the Suncor site or heard Bird Construction make any reference to it at site meetings.[24]

81 Chris Von Klitzing, Bird Construction's Suncor project manager, stated that Bird Construction did not post bonds on work sites.[25]

82 Mr. Klitzing had no idea until April 19, 2010 that Langford Electric had not paid Valard Construction and that Valard Construction held a default judgment against Langford Electric.[26]

83 On June 14, 2010 the Guarantee Company denied Valard Construction's claim.[27]

84 On June 30, 2010 Valard Construction commenced an action against the Guarantee Company for payment of the bond amount.[28]

85 On August 13, 2010 the Guarantee Company filed its defence. It pled that Valard Construction was precluded from commencing the action because it failed to give the Guarantee Company written notice within 120 days after the date upon which Valard Construction performed its last work on the project, May 20, 2009.[29] The 120-day deadline expired on September 17, 2009. It also claimed that Valard Construction's delay had prejudiced it.

86 On December 15, 2010 Valard Construction amended its statement of claim against the Guarantee Company adding Bird Construction as a defendant.[30]

87 On February 8, 2011 Bird Construction filed its statement of defence. It denied that "it had any obligation, fiduciary or otherwise to advise ... [Valard Construction] of the details of its relationship with Langford [Electric], including the existence and terms of the Payment Bond". It did not plead laches or s. 41 of the *Trustee Act*.[31]

88 In a counterclaim filed on July 8, 2011 Bird Construction sought indemnification for all costs Bird Construction incurred in defending the breach-of-trust action.[32]

89 On October 31, 2013 Valard Construction discontinued its action against the Guarantee Company, satisfied that noncompliance with the bond terms had caused the surety actual prejudice.[33]

90 Bird Construction applied for summary dismissal of Valard Construction's claim. Justice Verville wisely converted the proceedings into a mini-trial.[34] The three witnesses gave their evidence in less than a day.[35]

91 The trial judge dismissed Valard Construction's action. He held that Bird Construction, as the bond trustee, did not have any obligation to protect the interests of Valard Construction by providing notice to Valard Construction of the bond's existence.[36]

V. Important Provisions of the Labour and Material Payment Bond and Applicable Statutory Provisions

A. Labour and Material Payment Bond

92 The important provisions of the labour and material payment bond issued by the Guarantee Company of North America read as follows:[37]

> Langford Electric ... as Principal ... and ... Guarantee Company ... as Surety ..., are held and firmly bound unto Bird Construction ... as Obligee ... in the amount of ... $659,671 ... lawful money of Canada for the

payment of which sum ... [Langford Electric] and ... [Guarantee Company] bind themselves ... jointly and severally.

Whereas, ... [Langford Electric] has entered into a written contract with ... [Bird Construction], dated ... [October 20, 2008] for Suncor Energy Mem 2 Bay Shop Expansion in accordance with the Contract Documents submitted ... and ... hereinafter referred to as the Contract.

2. ... [Langford Electric] and ... [Guarantee Company], hereby jointly and severally[38] agree with ... [Bird Construction], as Trustee, that every Claimant who has not been paid as provided for under the terms of its contract with ... [Langford Electric], before the expiration of a period of ninety ... days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be jointly due to such Claimant under the terms of its contract with ... [Langford Electric] and have execution thereon. Provided that ... [Bird Construction] is not obliged to do or take any act, action or proceeding against ... [Guarantee Company] on behalf of the Claimants, or any of them to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of ... [Bird Construction] or by joining ... [Bird Construction] as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants, or any of them, who take such act, action or proceeding shall indemnify and save harmless ... [Bird Construction] against all costs, charges and expenses or liabilities incurred thereon, and any loss or damage resulting to ... [Bird Construction] by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of ... [Bird Construction] to sue on and enforce the provisions of this Bond.

3. It is a condition precedent to the liability of ... [Guarantee Company] under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of ... [Langford Electric, Guarantee Company and Bird Construction], stating with substantial accuracy the amount claimed and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in such clauses 3(b) and 3(c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant;

   (a) unless such notice shall be served ... [on Langford Electric, Guarantee Company and Bird Construction] ... . Such notice shall be given

      (i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by ... [Langford Electric] under either the terms of the Claimant's contract with ... [Langford Electric] or under the lien legislation applicable to the Claimant's contract with ... [Langford Electric], whichever is the greater, within one hundred and twenty ... days after such Claimant should have been paid in full under the Claimant's contract with ... [Langford Electric];

      (ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty ... days after the date upon which such Claimant did, or performed the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with ... [Langford Electric].

B. Applicable Statutory Provisions

93 Sections 33(1) and 41(2) of the *Builders' Lien Act*[39] read as follows:

33(1) A lienholder, by notice in writing, may at any reasonable time demand,

   (a) of the owner or the owner's agent, the production for inspection of the contract with the contractor,

   (b) of the contractor, the production for inspection of

      (i) the contract with the owner, and

      (ii) the contract with the subcontractor through whom the lienholder's claim is derived,

and

(c) of the subcontractor through whom the lienholder's claim is derived, the production for inspection of the contract with the contractor,

and the production for inspection of a statement of the state of accounts between the owner and contractor or contractor and subcontractor, as the case may be.

(2) If, at the time of the demand or within 6 days after it, the owner ... , the contractor or the subcontractor, as the case may be,

(a) does not produce the written contract and statement of accounts

...

then, if the lienholder sustains loss by reason of the refusal or neglect or false statement, the owner, contractor or subcontractor, as the case may be, is liable to the lienholder in an action for the amount of the loss ... .

...

41(2) A lien for the performance of services may be registered at any time within the period commencing when the lien arises and

(a) ... terminating 45 days from the day that the performance of the services is completed or the contract to provide the services is abandoned ... .

VI. Analysis

A. Bird Construction Acknowledges that It Is the Bond Trustee

94 This case has a very narrow focus. It requires a statement of the duties of a trustee under a labour and material payment bond.

95 Before directly addressing this issue it is helpful to immediately explain why trust principles play an indispensable role in Canadian labour and material payment bonds.[40] Bird Construction's factum[41] provides a clear answer: "The ... L & M Bond creates a limited trust which is necessary in order to avoid the 'third party beneficiary' rule that would have otherwise prevented a 'claimant', who is not a party to the bond, from suing on it. The trust is necessary because at the time that the bond is created, the identities of potential 'claimants' are not known".

96 In this passage Bird Construction fairly concedes[42] that the labour and materials payment bond[43] creates a trust.[44] Elsewhere it acknowledges that it is a trustee.[45]

97 Justice Gillese describes the markers of a trust:[46]

> In order to create a trust, there must be certainty of intention to create the trust, the subject matter of the trust must be described with such certainty that it is ascertained or capable of ascertainment, and those who are to benefit from the trust - the objects or beneficiaries - must be described in terms clear enough that the trust obligations can be performed properly. These three requirements are known as certainly of intention, certainty of subject matter, and certainty of objects. A statement or series of statements that together satisfy the three certainties amount to a declaration of trust. A declaration of trust is to be distinguished from the creation of a trust: the latter occurs when both the trust has been declared and title to the property has been conveyed to the trustee.

98 What kind of trust is at the heart of the bond?

99 It is an express trust.

100 In *Re Lubberts Estate*,[47] I ventured this definition: "An express trust exists if A, the settlor, declares an intention to transfer ascertainable property to B, the trustee, for the benefit of C, an identifiable person or object, the beneficiary, and A conveys the trust property to B".

101 The bond displays these essential features.

102 First, the bond clearly states that Langford Electric, the settlor,[48] intended[49] to create a trust. The text is unmistakable:[50] "The Principal and the Surety, hereby jointly and severally agree with the Obligee, as Trustee, that every Claimant who has not been paid as provided for under the terms of its contract with the Principal ... may *as a beneficiary of the trust herein provided* for, sue on this Bond, prosecute the suit to final judgment for such sums ... as may be justly due to such Claimant under the terms of its contract with the Principal ...".

103 Second, certainty of subject matter also exists. There is no doubt about the identity of the trust property.[51] The bond records a promise made by the Guarantee Company to Langford Electric for consideration to pay a specified sum of money to a described class of beneficiaries under stipulated conditions. The property the trustee holds for the beneficiaries is a chose in action[52] - a right of action against the Guarantee Company for amounts Langford Electric owes the claimant, a beneficiary, up to $659,671, the amount of the bond. "The subject matter is ascertained when it is a fixed amount or a specified piece of property".[53]

104 Third, the members of the class who are the beneficiaries of the trust - the holders of the equitable interest in the trust property - are ascertainable.[54] A trust instrument must describe the beneficiary with sufficient precision that "the court can be sure who are the person or persons the settlor intended to benefit".[55] The class is populated by persons who have a contract with Langford Electric to provide labour or material or both to the Suncor project and Langford Electric has not paid them in accordance with their contracts for at least ninety days after the date the beneficiary last performed work under its contract with Langford Electric. The text is precise. There is no risk that a reasonable objective observer will not know who the beneficiaries are.[56] A beneficiary need not be in existence when the trust instrument is prepared.[57]

105 A valid trust exists even if the beneficiaries are unaware of its existence when it is created.[58] This is vital to the efficacy of a labour and material payment bond because the entities that the settlor will do business with are unknown when the bond agreement is struck. It goes without saying that it is difficult, if not impossible, to know, when the bond is entered into, which businesses the settlor will ultimately select to assist it discharge its construction obligations and which members of this class of potential beneficiaries will not be paid and will eventually become beneficiaries.

B. A Trustee Has Onerous Duties

106 A trustee-beneficiary relationship is a fiduciary relationship.[59]

107 The trustee is the fiduciary.

108 A trustee has onerous[60] duties.

109 "The trust is a fiduciary relation involving the duty of unselfish loyalty and extreme good faith. ... Among those law-imposed duties are the obligations that the trustee act solely in the interest of the beneficiary, treat the beneficiary with the utmost fairness and frankness, conceal nothing from him, and take no advantage of him".[61] Justice Gillese expressed a similar opinion:[62] "The trustee ... [must] put the beneficiary's interest first in the performance of any act and the exercise of any powers or duties". A trustee shoulders onerous responsibilities "because the trustee has the right and power to control property belonging to another (the beneficiaries)".[63] This is the duty of loyalty.[64]

110 Asking a trustee to shoulder an onerous burden is not unfair. "[N]o one is obligated to accept the office of trustee".[65]

111 Chief Justice Cardozo, then of the New York Court of Appeals, expressed a similar standard in *Meinhard v. Salmon*:[66]

> Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behaviour. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions ... . Only thus has the level of conduct for fiduciaries been kept at a higher level than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.

112 In addition to acting in utmost good faith, a trustee must display a "standard of care and diligence ... [expected of] a man of ordinary prudence in managing his own affairs".[67]

113 A trustee must protect the interests of the beneficiaries without waiting to be asked to do so by the beneficiaries.[68]

114 A trustee who violates any duty the trustee owes to a beneficiary is in breach of the trust[69] and is responsible to a beneficiary for any loss resulting from the breach of trust.[70]

115 With these underlying principles in place, I will next consider the key issue - did Bird Construction discharge its important trustee duties?

C. A Trustee Must Undertake Reasonable Measures To Make Available to a Sufficiently Large Segment of the Class of Beneficiaries or Potential Beneficiaries Information About the Trust's Existence

116 A trustee's overriding obligation is to do what is required to advance the interests of the trust[71] and its beneficiaries.[72]

117 There are several aspects of this overriding obligation.[73]

118 This appeal engages one of them.

119 As a general rule,[74] a trustee must take reasonable measures to make available to a sufficiently large segment[75] of the class of beneficiaries or potential beneficiaries[76] information about the trust's existence and the criteria identifying a beneficiary. This obligation increases the likelihood that a beneficiary or a potential beneficiary will be able to take any necessary steps to protect any interests they may have under the trust and that the trust will serve the purpose the settlor intended for it.[77] "The trustees are accountable to these beneficiaries, and this accountability would be meaningless if trustees could choose not to tell the beneficiaries of their beneficiary status and their interests".[78]

120 The New Zealand Law Commission characterized this trustee obligation as mandatory in nature: "Trustees have a mandatory obligation to provide sufficient information to sufficient beneficiaries to enable the trust to be enforced".[79]

121 This basic proposition requires clarification and explanation.

122 First, this obligation attaches to a trustee if knowledge of the trust's existence and the markers of a beneficiary

would be of value to a beneficiary or a potential beneficiary.[80] It makes no sense to impose a duty that does not either advance the interests of a beneficiary or potential beneficiary or increase the likelihood that the purposes of the trust will be achieved.[81]

123 Would a potential beneficiary need this information in order to advance a claim as a beneficiary? Is knowledge on the part of a beneficiary or potential beneficiary essential to the trust achieving the purpose that the settlor pursued?

124 Suppose that A establishes a discretionary family trust with $10 million. The trust instrument allows B, A's first-born son, to draw on an annual basis the income from the trust fund to pay the costs of educating any grandchild or great-grandchild of A under the age of thirty if B thinks the proposed education program will benefit the grandchild. If B did not notify his nieces and nephews or their parents and his own children of the trust's existence the potential beneficiaries or their parents would be deprived of the opportunity to present to B specific requests for education funding. This point is easy to illustrate. Suppose C, B's niece, is a gifted young golfer. She is twelve years old and wants to attend a Florida golf school on a year-round basis. If C did not inform B of her wishes and the existence of a golf school that she wants to attend, B may never have known about C's education wish and that an educational institution dedicated to training golf prodigies existed.

125 Some trusts are, as far as the beneficiaries are concerned, in effect, self-executing and require no act on the part of a potential beneficiary for the trust's purpose to be achieved.[82] The trustee of this type of trust may be under no obligation to take any steps to bring the trust's existence to the attention of potential beneficiaries. Suppose that A donates $1 million to the University of Alberta to fund $500 scholarships for the law students who finish in the top one percent of their first and second years of law school studies. The University's records identify the eligible beneficiaries and its officers automatically distribute the trust funds to the eligible law students. A law student does not have to apply to receive the scholarship. If it was thought that $500 was too small a sum to affect a person's decision to attend the University of Alberta's law school, the University, as trustee, would have no obligation to publish the existence of this trust. If it was thought that the existence of this trust may cause some prospective students to decide to attend law school, the trustee would have a duty to publish its existence. I suspect that the trustee would discharge any notice obligations by publishing this scholarship on its website or in its catalogue.

126 Second, the reasonableness of the methods the trustee undertakes to publish the existence of the trust to a sufficiently large segment of potential beneficiaries is a function of the criteria identifying a beneficiary, the nature of the benefits a beneficiary may receive and the costs associated with the different communication methods.[83]

127 Suppose that A has had a very successful business career and attributes his success, in part, to the values he acquired while playing organized hockey as a boy. A establishes a trust with a $5 million gift so that boys and girls under the age of fifteen who are the grandchildren or great-grandchildren of persons who graduated from Edmonton's Jasper Place High School and want to play organized hockey in Edmonton but cannot afford it may do so. A asks B Trust Co. to serve as the trustee; B Trust Co. agrees.

128 The trust instrument does not record the measures that B Trust Co. must implement to publicize the trust. In determining the measures that B Trust Co. must undertake to bring the trust's existence to the attention of a sufficiently large segment of potential beneficiaries, consideration must be given to where the families of potential beneficiaries reside, the media that may provide notice of the trust's existence to the most potential beneficiaries, the cost of different media for publishing the trusts' existence and the places potential beneficiaries or their parents may congregate.

129 B Trust Co. might conclude that it is desirable to contact the Edmonton Minor Hockey Association and ask it to publish in materials it distributes to its members the trust's existence. As well, B Trust Co. might post notices on bulletin boards in Edmonton's indoor and outdoor rinks and ask Edmonton school boards to tell parents about the trust in school newsletters. Given the amount of the trust, B Trust Co. might decide that it would be prudent to publish a notice in the local newspapers.

130 These measures will probably reach most of the persons who meet the criteria defining the beneficiary class. A communication strategy that has the potential to inform this segment of potential beneficiaries of the trust's existence meets the standard imposed on B Trust Co. as a trustee. It is not possible to reach every potential beneficiary. That some persons who meet the criteria will be missed - some poor families who live in Vegreville may have decided to relocate to Edmonton had they received notice of the trust - does not detract from the fact that a sufficiently large segment of beneficiaries or potential beneficiaries will be reached. This degree of information disclosure is sufficient.

131 In some scenarios the trustee must implement a communication strategy that is designed to bring the existence of the trust to all potential beneficiaries or beneficiaries. This may be the case if there are not many potential beneficiaries or beneficiaries, the rewards for being a beneficiary are high and the cost of disseminating information to bring the existence of the trust to all potential beneficiaries or beneficiaries is not very significant.

132 Suppose that A, the owner of a downtown Calgary condominium gives the condominium to B Trust Co. in trust. The trust instrument states that C, A's longtime secretary, may reside in the condominium rent free for as long as she wishes, and that on C's death or at the time she ceases to reside in the condominium, it shall be sold and the proceeds divided equally among the children of D, A's brother, then alive. The trust asset is worth $2 million when C dies thirty years later at ninety-five. B Trust Co., knows that D had five children. The beneficiaries will each receive no less than $400,000. Four of the children live in Alberta. No one has seen G, the fifth child for over twenty years. G was a heroin addict and estranged from her family. B Trust Co., after a missing-person search firm is unable to locate G, publishes five notices at monthly intervals in the major newspapers in Alberta and Canada's two national newspapers at a cost of $20,000. This communication strategy would probably meet the test - reasonable measures to make available information to a known beneficiary about the trust's existence.

D. Nonconstruction Trust Case Law Imposes Notice Obligations on Trustees

133 The authors of Waters' Law of Trusts in Canada pose a rhetorical question in the following passage:[84]

> If the essence of any trust can be defined as a fiduciary ownership, or the separation of title holding and management from enjoyment, it is precisely that essence which has made the trust so valuable in commercial dealings. Whether the trust is employed as a security or holding device, as an instrument for group investment, or as a substitute for incorporation, that essential element of the trust is crucial to the success of the operation. Moreover, the employment of the trust principle in business and commerce has undergone great expansion in Canada. Are the fundamental principles of the law of trusts ... compatible with the nature of commercial dealings?

134 They obviously are, given the presence of pension trusts, profit-sharing trusts, registered retirement savings plan trusts, pooled investment trusts, health and welfare benefits trusts, condominium insurance trusts, stock voting trusts and a host of other commercial purpose trusts.[85]

135 In spite of the prevalence of commercial trusts, there is a dearth of case law on the question before the Court.

136 Two English,[86] one Canadian[87] and two American state courts[88] have held that a trustee has a duty to inform infants when they have a vested interest in the trust or their guardians that they are the beneficiaries of a family trust.

137 The trustees in the two English cases had failed to take reasonable steps to inform the infants when their interests vested, or their representatives who were known to the trustee, of the existence of a trust that made them beneficiaries and were held to be in breach of their duties as trustees.

138 In the British Columbia case, *In re Short Estate*,[89] Justice Manson criticized the trustee for failing to take reasonable measures to inform the mother of the settlor's nine-year old grand-niece that the deceased had

provided, in a testamentary trust, for the grand-niece's "maintenance, support and education" until she turned eighteen. It should have been obvious to the trustee that without a communication from the trustee the beneficiary would likely never have learned of her status as a beneficiary. Without citing any authority, Justice Manson stated that "a trustee does owe duties to a *cestui que trust* and one of the first of them is to let the *cestui que trust* know of his interest and something about the trust".[90]

139 The Texas Court of Civil Appeals came to the same conclusion in *Moore v. Sanders*.[91] It removed a trustee, in part, because she failed to inform the guardian of infants who were beneficiaries of a trust created for them by their deceased father: "[I]t was the duty of the trustee to notify the guardian of the beneficiaries of the existence of the [trust] fund".[92]

140 These cases are consistent with the principle that a trustee must take reasonable measures to make available to a sufficiently large segment of beneficiaries or potential beneficiaries information about the trust's existence and the markers of a beneficiary. In cases that feature a small number of known beneficiaries or potential beneficiaries it is reasonable to require the trustee to take low-cost measures to make available to known beneficiaries or potential beneficiaries information about of the trust's existence.

141 In *Mulford v. Mulford*,[93] the Superior Court of New Jersey also dealt with this issue. Vice-Chancellor Pitney was satisfied that the trustee properly and reasonably proceeded on the assumption that the parents of the infant beneficiaries had informed the infant beneficiaries that they were beneficiaries under their great-aunt's will. For this reason, he excused the executor for his failure to formally inform the beneficiaries when they turned twenty-one of their status as beneficiaries of a testamentary trust:[94]

> Another point made by the counsel of [the beneficiaries] ... was that it was the duty of the ... [trustee], as each of the defendants reached 21 years of age, to notify them that they had an interest under their great-aunt's will, and just what that interest was. It may be that it would have been much better on his own account for the ... [trustee] to have gone through that ceremony, but I am unable to find that he is guilty, in the eye of a court of equity, of any delinquency in not having done so. He certainly had every reason to suppose that the [beneficiaries] ... as they became old enough to understand any such matters, were informed by their parents that they were beneficiaries under their great-aunt's will.

142 This case stands for the proposition that a trustee who has reasonable grounds to believe that the beneficiaries have knowledge of their status as beneficiaries is relieved of the obligation to formally notify them of their status as beneficiaries.[95] A corollary of this principle is that a trustee who has no reasonable basis for concluding that the beneficiaries would have knowledge of their status as a beneficiary is obliged, as a trustee, to formally notify the beneficiaries of their status. In other words, the general rule - a trustee must take reasonable measures to make available to a sufficiently large segment of the beneficiaries or potential beneficiaries information about the trust's existence and the criteria identifying a beneficiary - applies unless a trustee has a reasonable basis for concluding that a person already knows of his or her status as a beneficiary.

143 *Segelov v. Ernst & Young Services Pty Ltd.*,[96] a recent decision of the New South Wales Court of Appeal, stands for the same proposition as does *Mulford v. Mulford*.

144 The facts were unusual. The beneficiary did not allege that the trustee failed to make trust payments to her. It did. Trust payments were made to the bank account that she and her husband held jointly. Her complaint is largely attributable to the facts that she did not know that she was a beneficiary and was unaware that her husband was appropriating the funds paid into their joint bank account for his own use.

145 Justice Gleeson, for a unanimous panel, opined that a trustee's obligation to give notice of the existence of a trust to beneficiaries or potential beneficiaries was a function of "the nature and terms of the relevant trust and the social or business environment in which the trust operates".[97] Applying this standard, the Court rejected a claim by a former wife of an Ernst & Young partner that Ernst & Young Services Pty Ltd., the trustee of a services trust, had

an obligation to notify her every time that it made a payment into the joint bank account that she and her husband had.

146 The facts amply support the conclusion that Ernst & Young Services Pty Ltd. had reasonable grounds to conclude that Ms. Segelov knew that she was a trust beneficiary. Her husband nominated her as a beneficiary.[98] It would not appear that he had to do so. The trustee made trust payments into a joint bank account.[99] Finally, the trustee provided Ms. Segelov with income tax documents recording the trust payments on which she had to pay tax.[100]

E. The Labour and Material Payment Bond Trust Cases Are Inconsistent with Fundamental Trust Principles

147 There are three construction law cases on point. One is a 1970 Ontario County Court oral decision;[101] the second is a 2014 Ontario Superior Court judgment[102] and the third is the judgment under appeal.

148 Both Ontario courts concluded that a labour and material payment bond trustee had no obligation to take reasonable measures to inform beneficiaries of the trust's existence[103] even though the trustee would have had no reasonable basis to believe that the beneficiaries would have been aware that a labour and material payment bond existed for their benefit.

149 In *Dominion Bridge Co. v. Marla Construction Co.*,[104] Judge Grossberg declined to impose a duty on Sun Oil, the owner of the gas station under construction and the trustee under the labour and material payment bond it required the general contractor to acquire, to provide bond beneficiaries with timely notice of the bond's existence.

150 The judge noted there was no construction case in Canada, England or the United States of which he was aware that had done so. He stated that "[i]n the absence of applicable authority I would not imply such duty in law".[105]

151 He also held that the text of the bond did not expressly require the trustee to notify potential beneficiaries of the bond's existence.[106]

152 The trial judge limited the two English cases[107] that imposed a duty on a trustee to notify beneficiaries to their facts - infant beneficiaries - and suggested that there would be practical problems if he acceded to the plaintiff's submissions:[108]

> [W]hen did the duty arise? at what point of time? what exactly was that duty? must Sun Oil embark upon inquiries [as to] who were the labourers? who were the creditors? who were the suppliers? Must Sun Oil seek out the creditors and suppliers? If the contention ... for the plaintiff be upheld, Sun Oil would be obliged to acquire knowledge of all materials purchased, all labourers on the job from day to day and to keep a constant surveillance. The consequences of the submission must be that Sun Oil must seek out material, men, suppliers, labourers, subcontractors, etc. of Marla and acquaint each that there was a bond in existence.

153 *Dolvin Mechanical Contractors Ltd. v. Trisura Guarantee Insurance Co.*,[109] a 2014 judgment of the Ontario Superior Court of Justice, held that the Toronto Transit Commission, the trustee of a labour and material payment bond, had no obligation under common law[110] or statute to notify a beneficiary of the bond's existence.[111]

154 These Ontario judgments are not binding on this Court[112]. And, with respect, I do not find them persuasive.

155 I first address Judge Grossberg's observation that he was not aware of any construction case in Canada, England or the United States that had imposed a duty on a construction company impressed with the obligations of a bond trustee to take reasonable steps to notify beneficiaries of the bond's existence.

156 Justice Laskin, as he then was, in *Thorson v. Canada*,[113] provided the proper response to this dilemma: "Counsel for the respondents contended that a provincial Attorney General could take declaratory proceedings, but he could cite no authority for this proposition nor could I find any. However, want of authority is not an answer if principle supports the submission".

157 Justice Hugessen, when sitting on the Quebec Court of Queen's Bench, also considered the significance of the precedential vacuum:[114]

> All parties before me readily concede that there is no precedent in point ... either in Canadian or British case law. Petitioner invites me to conclude from this that the answer to the question is so self-evident that it has never been raised. I am not prepared to accept this argument. ... Simply because something has never been done before is no good reason to say that it should not be done now. ... If the matter has not been decided before, it falls to be decided now ... .

158 In short, fundamental principles will provide the answer.[115]

159 A court tasked with the resolution of an issue that it has not resolved before must turn to first principles for guidance. This has always been the correct approach to questions that arise for the first time and it, undoubtedly, always will be.[116] "The strength of an argument is a function of its persuasiveness, not its precedential pedigree".[117]

160 The fundamental principle is that a trustee has a duty of loyalty. This includes the duty to undertake reasonable measures to make available to a sufficiently large segment of beneficiaries or potential beneficiaries information that announces the existence of the trust and the markers of a beneficiary if a beneficiary or potential beneficiary would derive a benefit from knowing that a trust existed and the criteria defining a beneficiary.

161 I see no principled basis,[118] in the absence of an express and unequivocal term in the trust instrument text to the contrary, for holding a trustee under a labour and material payment bond to a lower standard than applies to a trustee under a family trust. Academic commentary of which I am aware does not call for disparate treatment.[119] It calls for comparable treatment. There is no sound reason for establishing a principle that justifies abridging the duties of business trust trustees unless the trust instrument does so.

162 I agree with the extrajudicial opinion of Lord Justice Millett of the Court of Appeal of England and Wales to this effect:[120] "Equity's place in the law of commerce, long resisted by commercial lawyers, can no longer be denied. ... [E]quity deploys [two principal concepts] in the commercial field: the fiduciary duty and the constructive trust."

163 A labour and material payment bond trustee occupies an important position for the benefit of subcontractors and it is neither unprincipled nor unfair to insist that a trustee take reasonable measures to make available information about the existence of the bond to the subcontractors. This is not an onerous obligation.

164 In my opinion, the notice concerns Judge Grossberg catalogued in *Dominion Bridge Co*. are not significant.[121] Requiring a trustee in Sun Oil's position to take reasonable steps to make available to potential beneficiaries information about the existence of the labour and material payment bond is not asking too much of a trustee of a business trust. Sun Oil could have posted the bond at a prominent place at the work site. This would have given potential beneficiaries who discharged their contractual obligations by appearing at the work site a reasonable opportunity to learn of the bond's existence. If the trustee knew or had reason to believe that all subcontractors would perform their contractual obligations on site, that is all that the trustee would have to do. If Sun Oil knew or had reason to believe that some subcontractors could perform their contract work without coming to the site, Sun Oil could have discharged its trustee obligations by insisting in its contract with its general contractor that the general contractor notify all subcontractors of the bond's existence in writing or provide Sun Oil with a list of subcontractors so that Sun Oil could notify them.

165 If labour and material payment bond trustees are convinced that these obligations are onerous and impractical,

they should instruct their lawyers to draft labour and material payment bonds that expressly declare the notice obligation that the trustee bears. Careful drafters will realize that as the obligation of the trustee to discharge the universally accepted duties of a trustee diminishes, the risk that a court may decline to characterize the relationship as a trust increases.

166 The trial judgment under appeal is the third construction case.[122] Justice Verville, a senior trial judge, concluded that the bond set out the terms of the trust and that the bond did not oblige Bird Construction, the trustee, "to protect the interests of potential claimants".[123] This determination caused the trial judge to relieve Bird Construction of the burden of abiding by the duty of loyalty and completely undermined the foundation of Valard Construction's case. It meant that Bird Construction had no duty to take reasonable measures to bring the bond to the attention of Valard Construction.

167 The trial judge's reasons for this pivotal holding are set out below:

> [79] [T]he sub-contract between Langford and Bird required Langford to obtain the Bond for Bird's own protection. While trust relationships undoubtedly take many forms, it is clear from the case law, and the terms of the Bond itself, that the trust wording serves a limited purpose. Unlike other trust relationships, there is no suggestion in the standard wording, or in the case law, that the Bond creates duties on the obligee to protect the interests of potential claimants. It expressly states that the obligee is not required to take any act against the surety on behalf of the claimants to enforce the provisions of the bond.
>
> [80] I conclude that the sole purpose of the trust wording in the Bond is to address the difficulties that the identities of the claimants cannot be ascertained at the time the bond is entered into, and that the third party beneficiary rule would otherwise prevent a claimant from suing the surety.
>
> ...
>
> [84] Valard argues that Bird could easily have posted the Bond on the bulletin board in Bird's office trailer on the site, distributed copies of the Bond, or required Langford to take reasonable steps to notify its subcontractors and material suppliers of the existence of the Bond.
>
> [85] While this may be true, Bird was not obliged to provide notice.

168 The trial judge made three other important observations. First, Valard Construction is a sophisticated business and should have protocols designed to ascertain the existence of labour and material payment bonds.[124] Second, the *Dominion Bridge* case, even though it is an oral judgment of a lower court in another jurisdiction, "has reflected the state of the law for 45 years on the issue of whether the obligee under a standard form performance and materials bond is required to notify potential claimants of the existence of the bond".[125] Third, *Dominion Bridge* was correctly decided.[126]

169 I will first address the trial judge's *obiter* comments and then review the merits of the basis on which he decided the case.

170 For the reasons set out above, I reject the proposition that *Dominion Bridge* was correctly decided. Nothing more need be said on that topic.

171 I accept Justice Verville's statement that an oral decision has the force of law in the jurisdiction in which it is pronounced.[127] But it does not have the force of law elsewhere. The usual law governing the precedential value of decisions from other jurisdiction applies.[128] To my mind, the persuasiveness of a nonbinding precedent is a function of the cogency of its reasons. A judgment - whether oral or written - may display a compelling foundation for the outcome. Or it may not.

172 Justice Verville's statement that *Dominion Bridge* has been good law for forty-five years and should be followed[129] merits review. That view may be true for Ontario. It is not obvious to me that Alberta courts have ever

applied *Dominion Bridge* and that Alberta's construction community has proceeded on the assumption that a labour and material performance bond trustee has no obligation to take reasonable measures to bring the bond's existence to the attention of beneficiaries or potential beneficiaries. My research has not disclosed any other Alberta case besides Justice Verville's judgment.

173 Nor does Standard Construction Document CCPC 222-2002 limit the trustee's duty to exclude this equitable obligation.

174 As well, I suspect that this problem seldom arises because very few contractors in Bird Construction's position would not take reasonable measures to bring a labour and material payment bond to the attention of bond beneficiaries. A construction company utilizing best industry practices would publicize the existence of a labour and material payment bond. Why would a trustee that insists in a contract that another secure a bond that benefits both the trustee and beneficiaries not disseminate information about its existence to those who may benefit from it?

175 I also agree with the trial judge's statement that Valard Construction is a sophisticated business and that it is surprising it finds itself in this predicament. I suspect that Valard Construction now has in place mechanisms designed to reduce the risk that this ever happens again.

176 The trial judge and I part company on the proper interpretation of the standard form bond text.[130] He has proceeded on the understanding that unless the bond text states that the trustee must discharge a duty of loyalty to the beneficiaries no such duty exists. This is not my understanding of the law. It is the other way around.[131] Unless the trust instrument text abridges[132] the duties of a trustee, those duties that the law of equity imposes on a trustee apply.[133]

177 I also disagree with the trial judge's interpretation of the bond text.

178 While he correctly explains why a labour and material payment bond incorporates the trust concept - a trust allows nonparties to the bond contract to enforce the trust,[134] he erred when he then held that the trust concept did not impose on Bird Construction the duties equity assigns to a trustee:[135] "[T]he sole purpose of the trust wording in the Bond is to address the difficulties that the identities of the claimants cannot be ascertained at the time the bond is entered into, and that the third party beneficiary rule would otherwise prevent a claimant from suing the surety".

179 In the absence of unequivocal text in a bond reducing a trustee's fundamental duty to take reasonable measures to make available to a sufficiently large segment of beneficiaries or potential beneficiaries information about the trust's existence and the criteria identifying a beneficiary,[136] a bond trustee must discharge this obligation.

180 A trustee cannot both assert that the bond features a trust and that the trustee has none of the duties of a trustee.[137] A trust cannot function without a trustee.[138] This is a blatant violation of the equitable principle against approbation and reprobation.[139]

181 Second, the trial judge misconstrued the import of the term that relieves Bird Construction of the obligation to initiate any proceedings against the Guarantee Company on behalf of a beneficiary. While this term relieves the trustee of its obligation to commence, on its own initiative, an action against the surety, it does not strip Bird Construction of its duty of loyalty or protect it from any action for breach of trust. All its other obligations as the bond trustee remain and must be honoured.

182 The bond provision that Justice Verville used to buttress his conclusion that Bird Construction had no obligation to notify Valard Construction of the bond's existence had a very limited purpose. It recognizes that a beneficiary may commence an action against the Guarantee Company independently or name the trustee as a plaintiff or co-plaintiff in an action against the Guarantee Company for enforcement of the bond. If a beneficiary adopted the latter course it must indemnify Bird Construction for any costs the trustee incurred in acting as a plaintiff or co-plaintiff.

183 The bond text could not be clearer on this point:

> 2. [Langford Electric] ... and the ... [Guarantee Company], hereby jointly and severally agree with ... [Bird Construction] as Trustee, that every Claimant who has not been paid as provided for under the terms of its contract with ... [Langford Electric], before the expiration of a period of ninety ... days after the date on which the last of such Claimant's work or labour as done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of its contract with ... [Langford Electric]. Provided that ... [Bird Construction] is not obliged to do or take any ... action or proceeding against the ... [Guarantee Company] on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any ... action or proceeding is taken either in the name of ... [Bird Construction] or by joining ... [Bird Construction] as a party to such proceeding, then such ... action or proceeding, shall be taken on the understanding and basis that the Claimants ... who take such ... action or proceeding shall indemnify and save harmless the Obligee [Bird Construction] against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligee [Bird Construction] by reason thereof.

184 The text of the bond does not support the interpretation the trial judge gave it. This interpretation was not one that the words may bear.[140] It is implausible.[141]

185 Bird Construction is a trustee and subject to the duty of loyalty.

F. Bird Construction Committed a Breach of Trust

186 It is obvious that Valard Construction would have derived a benefit from knowing that a labour and material payment bond existed. Had Valard Construction known of the bond within the 120-day period after it last performed work under its contract with Langford Electric it would have submitted a claim to the Guarantee Company for $659,671.[142]

187 This determination triggers Bird Construction's obligations as a trustee under the general rule to take reasonable measures to make available to a sufficiently large segment of subcontractors of Langford Electric information about the trust's existence and the markers of a beneficiary.

188 Given the ease of identifying potential beneficiaries - subcontractors with contracts in excess of $100,000 and holding accounts receivables for at least ninety days, the potential benefit to Valard Construction of being a beneficiary - a payment of $659,671 by the Guarantee Company - and the low cost of bringing the bond's existence to all Langford Electric's subcontractors, Bird Construction, as the bond trustee, had an obligation to take reasonable measures to bring the bond's existence to the attention of all of Langford Electric's subcontractors.

189 Reasonable communication measures are not onerous. Bird Construction would have met this test if it had posted the bond at a conspicuous place at the Suncor project to which Langford Electric's subcontractors had access and required Langford Electric to include in its contract terms with subcontractors a notice term.

190 The evidence indicated that there were bulletin boards in Bird Construction's on-site office where toolbox meetings attended by businesses, including Valard Construction, working at the Suncor project site occurred.[143]

191 Bird Construction, undoubtedly, could have extracted a contractual commitment from Langford Electric to include a provision in all its contracts with subcontractors disclosing the existence of the bond and requiring the subcontractors to notify Bird Construction in writing within a stipulated period that they were aware of the bond's existence. Or Bird Construction could have required Langford Electric to provide it with a list of its subcontractors so that Bird Construction could have given them written notice of the bond's existence. This would have been a

reasonably effective manner of bringing the bond's existence to the attention of the subcontractors who discharged their contractual commitments to Langford Electric without coming to Suncor's site.

192 Bird Construction undertook neither of these measures.

193 Bird Construction cannot successfully argue that the general rule is inapplicable because it had reasonable grounds to believe that Valard Construction was aware of the bond's existence.[144]

194 There is no evidence that representatives of Bird Construction ever considered whether Valard Construction was aware of the bond and its status under it. Its officers did not put their mind to it.

195 Had there been such evidence Bird Construction would still have failed to establish reasonable grounds.

196 No witness swore that labour and material payment bonds were a standard feature of oil sands construction projects. Just the opposite - Mr. Wenyss, a person with ten years in the construction industry, had never worked on a private project that had a labour and material payment bond.[145] Nor was there any evidence that a representative of Bird Construction believed that Valard Construction had inquired of Bird Construction or Langford Electric about the existence of a labour and material payment bond.

197 Bird Construction breached the trust and is responsible for the damages that Valard Construction suffered as a result of Bird Construction's failure to discharge its obligations as the bond trustee.

198 The bond text does not relieve Bird Construction of its fundamental obligation to take reasonable measures to make available to Valard Construction and other similarly situated businesses information about the existence of the bond.[146] If there was an exculpatory or immunity clause to this effect, a beneficiary may ask the court to consider whether its existence strips the trust of an essential central element and is unenforceable.[147] Bird Construction did not rely on s. 41 of the *Trustee Act*.[148]

G. It Is Irrelevant Whether Valard Construction Could Have Discovered the Existence of the Bond by Exercising Due Diligence or Any Right Under the *Builders' Lien Act*

199 A determination that Bird Construction committed a breach of trust and is responsible to the beneficiary for any loss arising from its breach of trust, in the absence of a statutory direction to the contrary, concludes this controversy.

200 Bird Construction did not plead laches as a defence or invoke s. 41 of the *Trustee Act*. This means that the reasons why Valard Construction failed to discover before April 19, 2010 the existence of the bond are not relevant.[149]

201 Unless there is a statutory direction to the contrary, it is irrelevant whether Valard Construction could have discovered the existence of the bond by exercising due diligence.

202 Is there a clear statutory direction to the contrary?[150]

203 No.

204 There is nothing in the *Builders' Lien Act*[151] that remotely relates to the obligation a trustee under a labour and material bond payment has. Nor is the *Builders' Lien Act* an exhaustive statement of the rights contractors have to collect unpaid accounts.[152]

205 The *Builders' Lien Act* does nothing more than catalogue the rights that Valard Construction has as a potential lienholder and the obligations Bird Construction has if a potential lienholder exercises its rights under the enactment

and demands copies of the construction contracts between Bird Construction and Suncor and Bird Construction and Langford Electric.[153]

206 That the *Public Works Act*[154] compels a contractor to display at a conspicuous place on a public work site a copy of any labour and material payment bond does not affect the obligations Bird Construction has as a trustee under the labour and material payment bond on which Valard Construction bases its case. The two obligations arise from independent sources - one statutory and one equitable in nature - and the exercise of one duty does not affect the continued existence of the other.

207 Nor would Valard Construction's statutory right under the *Builders' Lien Act* to inspect the construction contracts between Bird Construction and Langford Electric serve as a foundation for a conclusion on Bird Construction's part that it is more likely than not that Valard Construction would be aware of the existence of the bond. If that was the case, then Bird Construction would be able to claim that it had reasonable grounds to conclude that it is probable Valard Construction knew of the bond's existence. There was no evidence that any representative of Bird Construction concluded that it was more likely than not that Valard Construction exercised its rights under the *Builders' Lien Act* and was aware of the bond's existence. Had Valard Construction made a written request under the *Builders' Lien Act* to Bird Construction different considerations would have come into play.[155]

208 Bird Construction led no evidence to suggest that labour and material payment bonds were a common feature of oil sands projects.

209 Nor does the bond text support the argument that Valard Construction may only claim under the bond if it exercises any rights it may have under the *Builders' Lien Act* or any related legislation.[156]

H. The Bond Indemnification Provision Does Not Require Valard Construction To Indemnify Bird Construction for the Costs Bird Construction Has Incurred in Defending Valard Construction's Breach-of-Trust Action

210 Bird Construction claims that it is entitled to a full indemnity costs award. It relies on the indemnification provision in the bond.

211 I assume that Bird Construction takes this position even if this appeal is successful.

212 The trial judge granted Bird Construction full-indemnity costs. His reasons follow:[157]

> [92] The Bond provides in paragraph 2 that if any action or proceeding is taken by joining the obligee [Bird Construction] as a party, the claimant who takes such action or proceeding shall indemnify and save harmless the obligee against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting therefrom.
>
> [93] Valard discontinued its suit as against ... [the Guarantee Company] in October 2013. However, the entire lawsuit has turned on Valard's ability to claim by virtue of the Bond. Therefore, it was an action taken on the Bond, joining the obligee, Bird [Construction], as party. In my view, the action falls within paragraph 2, and Bird [Construction] is therefore entitled to costs on a full indemnity basis.

213 The bond indemnity provision that Bird Construction relies on does not apply to this fact pattern.

214 It only applies if a beneficiary names Bird Construction in its capacity as the bond trustee as the sole or co-plaintiff in an action to enforce the bond against the Guarantee Company.

215 Valard Construction is the sole plaintiff in this action. It has not named Bird Construction either as a sole plaintiff or co-plaintiff.

216 In addition, Valard Construction has sued Bird Construction for breach of trust. This is not a lawsuit against the Guarantee Company.

217 This determination makes it unnecessary to resolve the other issue raised by Bird Construction's indemnity claim. Can a contract impose obligations on a third party?

VII. Conclusion

218 I would have allowed the appeal, set aside the trial judgment and awarded Valard Construction $659,671, the amount of the labour and material payment bond, plus interest.

219 I acknowledge the exceptionally high quality of counsel's written and oral submissions. This was a novel problem and counsel's excellent submissions assisted me considerably.

Reasons filed at Edmonton, Alberta this 29th day of August, 2016

T.W. WAKELING J.A.

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1 *R.S.A. 2000, c. B-7, s. 33*(1).

2 *R.S.A. 2000, c. T-8*. This provision gives the Court jurisdiction to relieve the trustee for liability for breach of trust if the "trustee has acted honestly and reasonably and ought fairly to be excused for the breach of trust".

3 *Valard Construction Ltd. v. Bird Construction Co*., *2015 ABQB 141*, para 8.

4 Id.

5 Id. para 33.

6 The Guarantee Company is a "compensated surety". See K. McGuinness, Construction Lien Remedies in Ontario 320 (2d ed. 1997) ("While there is a minor variation in the costs of bonds, they usually cost in the range of one-half to one percent of the principal amount secured"). The Supreme Court of Canada, in *Citadel General Assurance Co. v. Johns-Mansville Canada Inc*., *[1983] 1 S.C.R. 513*, 521-52, described "a compensated surety" in the following terms: "In more recent times, particularly in the construction industry, the need for financial guarantees to ensure prompt payment for materials and labour supplied has seen the entry into this field of professional surety companies, often called bonding companies, which are frequently also engaged in the insurance business. Their business consists of guaranteeing performance and payment in return for a premium. ... It was argued that they should not be treated by the courts with the same solicitude reserved heretofore for accommodation sureties". See also *Tebbets v. Mercantile Credit Guarantee Co*., 73 F. 95, 97 (2d Cir. 1896) ("'surety' companies ... undertake to assure persons against loss, in return for premiums sufficiently high to make such business commercially profitable. Their contracts are, in fact, policies of insurance and should be treated as such") & Arnold, "The Compensated Surety", 26 Colum. L. Rev. 171 (1926).

7 *Valard Construction Ltd. v. Bird Construction Co*., *2015 ABQB 141*, para 8. The bond confusingly stipulates two different amounts. The Arabic numeral is "$659,671.00". The word amount is $100 larger, "six hundred fifty nine thousand seven hundred seventy one and 00/00 dollars" (emphasis added). Valard Construction claims payment of the smaller amount - $659,671. There is no need in a printed document to use words to describe an amount designated in numerals. The numerals are easily discerned. The extra words are superfluous and the source of potential confusion. Just as happened here. Lawyers committed to plain language documents should never utilize both numerals and words to describe an amount unless there is a very good reason for doing so. See M. Asprey, Plain Language for Lawyers 303 (4th ed. 2010) & Eagleson, "Numbers: figures or words: a convention under the spotlight", 50 Clarity 32, 34 (November 2003). Chief Justice McLachlin encouraged lawyers and judges to delete from their text unnecessary words: "If it is possible to cut out a word, always cut it out", "Legal Writing: Some Tools", *39 Alta. L. Rev. 695*, 697 (2001). Less is more in legal writing.

8 See K. McGuinness, Construction Lien Remedies in Ontario 583-84 (2d ed. 1997).

9 *Valard Construction Ltd. v. Bird Construction Co.*, *2015 ABQB 141*, para 34.

10 Id. para 18.

11 Id. para 17.

12 Id. para 10.

13 Id. para 3.

14 Id. para 25.

15 Id. para 24.

16 Id.

17 Id. para 22.

18 Id. para 11.

19 Id.

20 Id. para 25.

21 Id. paras 25, 31 & 32.

22 Id. para 12.

23 Id. paras 22 & 86.

24 Id. para 25.

25 Id. para 34.

26 Id. para 37.

27 Id. para 12.

28 Id. para 13.

29 Id.

30 Id. para 14.

31 *R.S.A. 2000, c. T-8*.

32 *Valard Construction Ltd. v. Bird Construction Co.*, *2015 ABQB 141*, para 14.

33 Id. paras 15 & 76. See K. Scott & R. Reynolds, Scott and Reynolds on Surety Bonds 2-49 (looseleaf 2014 release 2) ("If the surety has been prejudiced by the manner in which notice ... has been given ... then the notice requirement will be enforceable").

34 Id. para 7.

35 Id.

36 *Valard Construction Ltd. v. Bird Construction Co.*, *2015 ABQB 141*, paras 79 & 85.

37 This is Standard Construction Document CCDC 222-2002.

38 K. Scott & R. Reynolds, Scott and Reynolds on Surety Bonds 2-17-18 (looseleaf 2014 release 2) (joint and several liability allows the surety to pursue the principal contractor for indemnification).

39 *R.S.A. 2000, c. B-7*.

40 D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 77 (4th ed. 2012) ("[under a] labour and material payment bond ... [t]he contractor and surety ... assume ... the obligation that all suppliers of labour and material to the project will be paid").

41 Factum of the Respondent, para 16. See also D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 69 (4th ed. 2012) ("The common law rule has long been that only persons who are party to a contract may sue upon it"). Bonds utilize the trust concept to overcome the principle that only parties to a contract may enforce it. K. McGuinness, Construction Lien Remedies in Ontario 584 (2d ed. 1997) ("The owner is named as the trustee on behalf of the

claimants. The original reason ... was to circumvent the requirement for privity of contract, which prevented the suppliers to the contractor from suing directly on the bond") & *Harris Steel Ltd. v. Alta Surety Co.*, *119 N.S.R. (2d) 61*, 66-67 (C.A. 1993) leave den'd *[1993] S.C.C.A. No. 89* ; *[1993] 2 S.C.R. v*. In some jurisdictions, legislation has declared that persons who are not parties to a performance bond may commence an action against the surety. *Construction Lien Act*, *R.S.O. 1990, c. C30, s. 69*(1); *Law and Equity Act*, *R.S.B.C. 1996, c. 253, s. 48* & K. McGuinness, Construction Lien Remedies in Ontario 584 (2d ed. 1997). In the United States, on account of the *Miller Act*, 49 Stat. 794, 40 U.S.C. s 270(b) (1935), persons who are not parties to the surety contract secured by a construction contractor for a United States public work may sue the surety to enforce the terms of the bond for its benefit. See *Fleisher Engineering & Construction Co. v. United States*, 311 U.S. 15, 17 (1940); *United States v. Cortelyou & Cole Inc.*, 581 F. 2d 239, 241 (9th Cir. 1978) & Arnold, "The Compensated Surety", 26 Colum. L. Rev. 171, 184 n. 56 (1926).

42 The party asserting the existence of a trust bears the persuasive burden of establishing the facts that support the creation of a trust. *Tobin Tractor (1957) Ltd. v. Western Surety Co.*, *40 D.L.R. (2d) 231*, 239 (Sask. Q.B. 1963) & G. Bogert, Trusts 26-27 (6th ed. 1987).

43 G. Bogert, Trusts 2 (6th ed. 1987) ("The trust instrument is the document by which property interests are vested in the trustee and beneficiary and the rights and duties of the parties (called the trust terms) are set forth").

44 Hart, "What Is a Trust?", 15 Law Q. Rev, 294, 301 (1899) ("A trust is an obligation, imposed either expressly or by implication of law whereby the obligor is bound to deal with property over which he has control for the benefit of certain persons of whom he himself may be one, and any one of whom may enforce the obligation"). See also D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 3-4 (4th ed. 2012) (refers to several definitions with approval); E. Gillese, The Law of Trusts 5 ("a trust arises when there is a split in legal and beneficial ownership to property - that is, whenever one person holds legal title to property and is legally obliged to manage that property for the benefit of another. It is an equitable concept that enables two persons to have shared ownership rights in a single piece of property. ... A trust can be created for any purpose so long as the purpose is not illegal or contrary to public policy") & D. Hayton, P. Matthews & C. Mitchell, Underhill and Hayton Law Relating to Trusts and Trustees 2 (18th ed. 2010) ("A trust is an equitable obligation, binding a person (called a trustee) to deal with property (called trust property) owned by him as a separate fund, distinct from his own private property, for the benefit of persons (called beneficiaries ...), of whom he may himself be one, and any one of whom may enforce the obligation").

45 *Valard Construction Ltd. v. Bird Construction*, *2015 ABQB 141*, paras 5 & 38. See G. Dal Pont & D. Chalmers, Equity and Trusts in Australia and New Zealand 403 (2d ed. 2000) ("a trust must have a *trustee* who holds the legal title to the trust property") & G. Bogert, Trusts 90 (6th ed. 1987) (a trustee is needed to administer a trust).

46 E. Gillese, The Law of Trusts 41 (3d ed. 2014). See also J. Glister & J. Lee, Hanbury and Martin Modern Equity 79 (20th ed. 2015); D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts 140 (4th ed. 2012); D. Hayton, P. Matthews & C. Mitchell, Underhill and Hayton Law Relating to Trusts and Trustees 107 (18th ed. 2010); G. Dal Pont & D. Chalmers, Equity and Trusts in Australia and New Zealand 403 (2d ed. 2000) & G. Bogert, Trusts 19, 70, 121 & 122 (6th ed. 1987).

47 *2014 ABCA 216*, para 49; *[2014] 10 W.W.R. 41*, 60-61. See also J. Glister & J. Lee, Hanbury and Martin Modern Equity 58 (20th ed. 2015) ("An express trust is one intentionally declared by the creator of the trust, who is known as the settlor, or, if the trust is created by will, the testator"); E. Gillese, The Law of Trusts 39 (3d ed. 2014) ("An express trust is one that is created intentionally; it is the conscious act of a person to transfer property to one party, with the stipulation that the property is held for the benefit of another") & G. Bogert, Trusts 19 (6th ed. 1987) ("An express trust is one which comes into being because a person having the power to create it expresses an intent to have the trust arise and goes through the requisite formalities").

48 A, a settlor, may purchase a promise from B the discharge of which will benefit C, the beneficiary, and assign to D, the trustee, the right to enforce B's promise. G. Bogert, Trusts 22 (6th ed. 1987).

49 See D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 141 (4th ed. 2012) ("There is no need for any technical words ... for the creation of a trust") & G. Bogert, Trusts 24 (6th ed. 1987) ("No particular words or phrases need to be used, and words of trusteeship are not necessarily conclusive").

50 Emphasis added. See *Citadel General Assurance Co. v. Johns-Manville Canada Inc.*, *[1983] 1 S.C.R. 513*, 520 (the surety acknowledged that a labour and material performance bond identical in its key provisions to the bond under review here created a trust).

51 D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 159 (4th ed. 2012) & G. Bogert, Trusts 25-26 & 70 (6th ed. 1987).

52 A chose in action is property. It is a right to bring an action to secure realty or personal property. The owner of the chose in action may assign it to another by contract or as a gift. The chose in action may become trust property. See D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 68 n.101 (4th ed. 2012).

53 E. Gillese, The Law of Trusts 43 (3d ed. 2014). See also D. Hayton, P. Matthews & C. Mitchell, Underhill and Hayton Law Relating to Trusts and Trustees 107 (18th ed. 2010) ("If either the property or the beneficiaries cannot be ascertained with certainty there can be no trust for the beneficiaries, the settlor remaining beneficial owner of the property") & G. Bogert, Trusts 73 (6th ed. 1987) ("An indefinite or uncertain trust res is as fatal to the trust as no subject matter whatever").

54 D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 167 (4th ed. 2012) & G. Bogert, Trusts 24 (6th ed. 1987).

55 G. Bogert, Trusts 122 (6th ed. 1987).

56 E. Gillese, The Law of Trusts 45 (3d ed. 2014) & D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 167-68 (4th ed. 2012).

57 G. Bogert, Trusts 125-26 (6th ed. 1987).

58 *Segelov v. Ernest & Young Services Pty Ltd*., [2015] NSWCA 156, para 118 ("an entitlement under a trust is valid notwithstanding that the beneficiary has no knowledge of it"); *DeLeuil's Executors v. DeLeuil*, 255 Ky. 406, 410; 74 S.W. 2d 474, 476 (Ct. App. 1934) ("the owner of property can make himself a trustee of it for another ... without that other being appraised of the trust"); *Irving Bank-Columbia Trust Co. v. Rowe*, 210 N.Y.S. 497, 499; 213 App. Div. 281, 283 (1925) (a trust may be created without a beneficiary being aware of it); G. Bogert, Trusts 130 (6th ed. 1987) ("That the settlor did not inform the beneficiary of his acts of trust creation before or at the time of performing them does not prevent completion of the trust") & American Law Institute, Restatement of the Law of Trusts s 36 (2d ed. 1959) ("A trust can be created without notice to or acceptance by the beneficiary"). Suppose that A declares in writing that he held designated securities in trust for B, his first grandchild; the securities to be transferred on the child attaining eighteen years of age. A continues to hold the legal title. But the equitable interest now resides in B, even though B is unaware of his ownership interest. A informs only his stockbroker of the trust's existence. It is still a valid trust. A trust can be created without the beneficiary having any knowledge of its existence. A person, within a reasonable time of learning that he or she has the status of a beneficiary, must decide either to accept or reject the equitable property interest associated with the status of beneficiary. *Bacon v. Barber*, 110 Vt. 280, 287; 6 A. 2d 9, 12-13 (Sup. Ct. 1939) ("The right of renunciation must ... be exercised within a reasonable time after opportunity is afforded the donee to do so; and must be shown by some positive, overt act, or course of conduct"). Suppose that A gave B his boa constrictor in trust for C, his grandniece, when she turns eighteen. C, twelve when the trust was created, as a pre-teen, had shown keen interest in A's snake. C developed ophidiophobia shortly before she turned eighteen. C declined to accept an ownership interest in the boa constrictor, as soon as B informed her of her interest in her great-uncle's snake. See G. Bogert, Trusts 131 (6th ed. 1987) ("there is the common law privilege not to have one's property ownership increased by others without voluntary acceptance of the tendered property interest").

59 E. Gillese, The Law of Trusts 10 (3d ed. 2014) & D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 9 & 42 (4th ed. 2012).

60 J. Glister & J. Lee, Hanbury and Martin Modern Equity 475 (20th ed. 2015) & E. Gillese, The Law of Trusts 154 (3d ed. 2014).

61 G. Bogert, Trusts 29 & 79 (6th ed. 1987). See also G. Bogert, Trusts 2 & 341 (6th ed. 1987) ("The court of equity ... places on the trustee the duty to act with strict honesty and candor and solely in the interest of the beneficiary. ... The trustee owes a duty to the beneficiaries to administer the affairs of the trust solely in the interests of the beneficiaries, and to exclude from consideration his own advantages and the welfare of third persons").

62 The Law of Trusts 154 (3d ed. 2014). See also D. Pavlich, Trusts in Common-Law Canada 276 (2014) ("a trustee, because he must act in good faith and advance the interests of the beneficiary, cannot pursue his own interests (or the interests of someone other than the beneficiary) in a way that does not accord priority to the beneficiary").

63 E. Gillese, The Law of Trusts 10-11 (3d ed. 2014).

64 E. Gillese, the Law of Trusts 154 (3d ed. 2014) & G. Bogert, Trusts 341 (3d ed. 1987). The duty of loyalty is the theoretical basis for the duty to protect the trust assets, to account and "to provide information". E. Gillese, The Law of Trusts 154 (3d ed. 2014).

65 D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 996 (4th ed. 2012). See also G. Bogert, Trusts 100 (6th ed. 1987) ("Every person who is tendered the office of trustee has the power to accept or decline it").

66 164 N.E. 545, 546; 249 N.Y. 458, 464 (1928).

67 *Fales v. Canada Permanent Trust Co*., [1977] 2 S.C.R. 302, 315 (1976). See also *Learoyd v. Whiteley*, L.R. 12 A.C. 727, 731 (H.L. 1887) ("A trustee must use ordinary skill and caution" per Lord Halsbury, L.C.) & 733 ("As a general rule the law requires of a trustee no higher degree of diligence in the execution of his office than a man of ordinary prudence would exercise in the management of his own private affairs" per Lord Watson); *Re Speight*, 22 Ch. D. 727, 740 (C.A. 1883) ("It never could be reasonable to make a trustee adopt further and better precautions than an ordinary prudent man of business would adopt"); J. Glister & J. Lee, Hanbury and Martin Modern Equity 477 (20th ed. 2015) ("Trustees must act honestly; and must take, in managing trust affairs, all those precautions which an ordinary prudent man of business would take in managing similar affairs of his own"); D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 975 (4th ed. 2012) ("the trustee must show ordinary care, skill, and prudence, he must act as the prudent person of discretion and intelligence would act in his own affairs"); G. Bogert, Trusts 334 (6th ed. 1987) ("In the management of the trust the trustee is bound to display the skill and prudence which an ordinarily capable and careful man would use in the conduct of his own business of a like character and with objectives similar to those of the trust") & American Law Institute, Restatement of the Law of Trusts s 174 (2d. ed. 1959) ("The trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property"). The *Trustee* Act, R.S.A. 2000, c. T-8, ss. 3-8 stipulates standards for trustees who invest trust funds.

68 *Hawkesley v. Mays*, [1956] 1 Q.B. 304, 325 (1955); *In re Wentworth*, 181 N.Y.S. 435 aff'd 181 N.Y.S. 442; 190 App. Div. 829 aff'd 129 N.E. 646, 230 N.Y. 176 (Ct. App. 1920) & Salomon, "Labour and Material Payment Bonds", 19 McGill L.J. 433, 437 (1973).

69 American Law Institute, Restatement of the Law of Trusts s 201 (2d ed. 1959) ("A breach of trust is a violation by the trustee of any duty which as trustee he owes to the beneficiary").

70 *Fales v. Canada Permanent Trust Co*., [1977] 2 S.C.R. 302, 320 (1976) ("The measure is the actual loss which the acts or omissions have caused to the trust estate"); *Toronto Dominion Bank v. Uhren*, 24 D.L.R. 2d 203, 214 (Sask. C.A. 1960) (Culliton, J.A. quoted with approval from Snell's Principles of Equity 221 (24th ed.): "The measure of the trustee's liability for breach of trust is the loss thereby caused to the trust estate") & American Law Institute, Restatement of the Law of Trusts s 205 ("If the trustee commits a breach of trust, he is chargeable with ... any loss ... resulting from the breach of trust"). See also J. Glister & J. Lee, Hanbury and Martin Modern Equity 629 (20th ed. 2015) ("A trustee who fails to comply with her duties is liable to make good the loss to the trust estate"); E. Gillese, The Law of Trusts 180 (3d ed. 2014); D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 1279 (4th ed. 2012); D. Hayton, P. Matthews & C. Mitchell, Underhill and Hayton Law Relating to Trusts and Trustees 1113-14 (18th ed. 2010); G. Dal Pont & D. Chalmers, Equity and Trusts in Australia and New Zealand 71 (2d ed. 2000) & G. Bogert, Trusts 558 (6th ed. 1987).

71 *Breakspear v. Ackland*, [2008] EWHC 220, para 62; [2009] Ch. 32, 53.

72 *Ontario v. Ballard Estate*, 119 D.L.R. (4th) 750, 754 (Ont. Ct. Gen. Div. 1994) ("[a trustee] is duty bound to act in the best interests of the beneficiaries"); *Armitage v. Nurse*, [1998] Ch. 241, 253 (C.A. 1997) ("trustees [have a duty] to perform the trusts honestly and in good faith for the benefit of the beneficiaries") & *Segelov v. Ernst & Young Pty Ltd*., [2015] NSWCA 156, para 136 (a trustee must faithfully perform a trustee's duties).

73 New Zealand Law Commission Review of the Law of Trusts: A Trusts Act for New Zealand 96 (2013) ("all of the mandatory duties we list ... are as vital to the existence of a trust as the obligation of honesty and good faith").

74 There are exceptions to the general rule or presumption. See New Zealand Law Commission, A Review of the Law of Trusts: A Trusts Act for New Zealand 114 (2013). First, the trustee may have reasonable grounds to believe that the beneficiaries are already aware of the trust's existence and their status as beneficiaries. This may relieve the trustee of the obligation under the general rule or presumption. Suppose that A, on January 1, 1995, delivered a 1962 Bentley S2 Continental automobile to B, an automobile museum, in trust for C, A's grandnephew until C graduated from law school or attained the age of thirty, whichever occurred first. A asked B to maintain this vehicle in pristine condition and gave B permission to display it. A delivered to B a cheque for $200,000 payable to B for this purpose. C was only sixteen years of age in 1995. A was in a nursing home when he constituted the trust. A informed B in writing that he had informed C of the trust's existence. But he had not. He forgot. A died in 2000. C graduated from law school in 2003. After A's death B's officers turned over several times. B misplaced the trust documents. The officers of B who knew about the trust had either retired or left B for other reasons. It was not until 2010 that B realized that it held the vehicle in trust and delivered

the car to him. In the thirteen years following the constitution of the trust, the value of the Bentley spiked. It hit $1.5 million in 2007. By the time C acquired possession of the Bentley, its value had declined substantially. The 2008 market crash adversely affected the value of a whole range of luxury products - automobiles, jets and boats. C sued B for breach of trust, seeking as damages the loss in value between 2003, the time C became a lawyer, and 2010, the time B delivered the Bentley to C. Could B successfully argue that it had no obligation notify C of his status as a beneficiary because it had reasonable grounds to believe that A told C about the trust? Segelov v. Ernst & Young Service Pty Ltd., [2015] NSWCA 156 & Mulford v. Mulford, 53 A. 79 (1902) (a trustee who has reasonable grounds to believe that a beneficiary has knowledge of his or her status as a trustee has no obligation to formally notify the beneficiary of his or her status as a beneficiary). Second, the settlor may have good reasons for keeping the trust a secret and may have directed the trustee not to give the beneficiary advance notice of the trust's existence and the person's status as a beneficiary. The trust's existence may adversely affect the settlor's relationship with third parties. Suppose that A creates a trust for B, his only child. C, A's second wife, does not like B. A does not want C to know about the trust. It would annoy C.E.g., Breakspear v. Ackland, [2008] EWHC 220; [2009] Ch. 32 (the settlor delivered a wish list letter to the trustees with the request that they not disclose it so that it would not generate family discord). The settlor may reasonable believe that the beneficiary's best interests are promoted by keeping the trust a secret. Suppose that A believes his son's industry would be greatly diminished if he knew that the trust A created for his son's benefit would make him a wealthy man when his son turned thirty. A was satisfied that his son would establish good work habits by the time he turned thirty if he did not know what the future had in store for him. Or suppose that B, the beneficiary of the trust A established, did not know that she had a medical condition that would substantially impair her ability to earn a living. A did not want B to know about the trust because it would prompt her to ask questions that A did not want to answer. E.g., Breakspear v. Acklands, [2008] EWHC 220, para 54; [2009] Ch. 32, 51 ("it is appropriate that the beneficiary ... be kept ignorant [of some life-threatening illness]") & DeLeuil's Executors v. DeLeuil, 255 Ky. 406, 74 S.W. 2d 474, 474-75 (Ct. App. 1934) (a father instructed the trustee bank not to inform his daughter who was in poor physical and mental health about a trust he created for her benefit). Other valid reasons may speak against imposing an obligation to disclose. See generally New Zealand Law Commission, Review of the Law of Trusts: A Trusts Act for New Zealand 103 (2013) (nondisclosure of the trust's existence may be appropriate in limited circumstances).

75 New Zealand Law Commission, Review of the Law of Trusts: A Trusts Act for New Zealand 103 (2013) ("Trustees have a mandatory obligation to provide sufficient information to sufficient beneficiaries to enable the trust to be enforced").

76 I see no reason to distinguish between those with a present interest and those with only a contingent interest. See *Ontario v. Ballard Estate*, *119 D.L.R. (4th) 750*, 756 (Ont. Ct. Gen. Div. 1994) ("In a hypothetical case, it may be that in the end, the residual legatee will receive nothing because the executors or trustees have not acted in good faith or breached their fiduciary duty").

77 See *In re Short Estate*, *[1941] 1 W.W.R. 593*, 596 (B.C. Sup. Ct.) (a trustee has an obligation to bring the existence of the trust to a beneficiary's attention); *Hawkesley v. May*, [1956] 1 Q.B. 304, 322 (the Court held that a trustee had a duty to inform a beneficiary that he had an interest in the trust fund); *Brittlebank v. Goodwin*, L.R. 5 Eq. 545, 550 (Ch. 1868) ("[the trustee had a] duty ... to have informed the persons interested when they attained 21, of the position of the fund and of their rights"); *Burrows v. Walls*, 43 Eng. Rep. 859, 868 (Ch. 1855) ("It was undoubtedly the duty of the three trustees ... to have explained to the infants [the beneficiaries] as they came of age what their rights were"); *Moore v. Sanders*, 106 S.W. 2d 337, 339 (Tex. Ct. Civ. App. 1937) ("it was the duty of the trustee to notify the guardian of the beneficiaries of the existence of the [trust] fund"); *Mulford v. Mulford*, 53 A. 79 (N.J. Super. Ct. 1902) (a trustee who has no reasonable basis to conclude that a person would know that he or she is a trust beneficiary must formally notify the person of his or her status); *Segelov v. Ernst & Young Pty Ltd*., [2015] NSWCA 156, para 130 (whether a trustee has an obligation to inform a person who is a beneficiary or a potential beneficiary of a trust's existence is determined by "the nature and the terms of the relevant trust and the social or business environment in which the trust operates"); *Hartigan Nominees Pty. Ltd. v. Rydge*, 29 N.S.W.L.R. 405, 432 (C.A. 1992) ("For myself, I doubt whether it is the duty of a trustee to inform all persons who may possibly take under a discretionary power of the nature and extent of that possibility") per Mahoney, J.A.; J. Glister & J. Lee, Hanbury and Martin Modern Equity 545 (20th ed. 2015) ("The beneficiaries are entitled to be informed about matters currently affecting the trust"); L. Tucker, N. Le Poidevin & J. Brightwell, Lewin on Trusts 909-10 (19th ed. 2015) ("A trustee of a settlement *inter vivos* is under a duty to inform a beneficiary who has recently attained his majority and become entitled in possession under the settlement, not only of the existence of the settlement, but also of his interest under it, so that they can pay him what is due. ... We consider that trustees have a duty to take reasonable steps to inform an adult beneficiary with a future vested, vested defeasible or contingent interest under the settlement of its existence and the general nature of his interest under it, as soon as reasonably practicable after the interest comes into existence, unless the trustees reasonably believe that by reason of the remoteness of the interest the beneficiary has no reasonable prospect of successfully asserting rights to information on demand, or there are other special circumstances (not merely the wish of the settlor to keep the existence of the

trust a secret) justifying delay in disclosure"); E. Gillese, The Law of Trusts 154 (3d ed. 2014) ("the duty of loyalty [includes] ... the duty to provide information"); 98 Halsbury's Laws of England 315 (5th ed. 2013) ("A trustee has a duty to inform a beneficiary of full capacity of his interest under the trust, but is under no duty to provide him with legal advice as to his rights"); New Zealand Law Commission, Review of the Law of Trusts: A Trusts Act for New Zealand 103 (2013) ("There is a presumption that trustees must ... notify qualifying beneficiaries (those who the settlor intended to have a realistic possibility of receiving trust property under the terms of the trust) as soon as it is practicable of the fact that a person is a beneficiary, names and contact details of trustees, and the right of beneficiaries to request a copy of the trust deed or trust information"); D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 1126, 1132 & 1134 (4th ed. 2012) (a trustee must inform the beneficiaries of the trust's existence); D. Hayton, P. Matthews & C. Mitchell, Underhill and Hayton Law Relating to Trusts and Trustees 813 (18th ed. 2010) ("a beneficiary of full age and capacity has a right to be told by the trustees that he is a beneficiary and, indeed, a right to be told by the settlor the name and address of the trustees to whom demands for accounts and requests for discretionary distributions can be sent"); G. Dal Pont & D. Chalmers, Equity and Trusts in Australia and New Zealand 621 (2d ed. 2000) ("The scope and extent of this obligation [to disclose to beneficiaries the existence of their rights under the trust instrument] remains unclear. What can be said is that it is unlikely that trustees are required to seek out and inform all persons under a discretionary power of their rights under the trust"); G. Bogert, Trusts 352 & 494 (6th ed. 1987) ("At the beginning of his administration the trustee has a duty to ... ascertain who the beneficiaries are, and should notify them of their interests. ... The trustee is under a duty to furnish to the beneficiary on demand all information regarding the trust and its execution which may be useful to the beneficiary in protecting his rights and to give to the beneficiary facts which the trustee knows or ought to know would be important to the beneficiary"); American Law Institute, Restatement of the Law of Trusts s 173 (2d ed. 1959) ("the trustee is under a duty to the beneficiary to give him upon his request at reasonable times complete and accurate information as to the nature and amount of the trust property"); *Schmidt v. Rosewood Trust Ltd.*, [2003] UKPC 26, para 67; [2003] 2 A.C. 709, 734-35 (Isle of Man) ("Especially when there are issues as to personal or commercial confidentiality, the court may have to balance the competing interests of different beneficiaries, the trustees themselves and third parties" in determining whether disclosure is appropriate); *In re Tillott*, [1892] 1 Ch. 86, 88 (H.C.) ("The general rule ... is ... that the trustee must give information to his cestui que trust as to the investment of the trust estate"); *Erceg v. Erceg*, [2016] NZCA 7, para 29 (in determining whether to order the disclosure of trust documents the court must consider what decision "ensure[s] the sound administration of the trust", the interests of the beneficiary to a full account, the wishes of the settlor) & *Loud v. Winchester*, 52 Mich. 174, 183; 17 N.W. 784, 787 (Sup. Ct. 1883) ("The beneficiaries under a trust have the right to be kept informed at all times concerning the management of the trust, and it is the duty of the trustees to inform them"). A trustee that informs a creditor-beneficiary of the existence of a labour and material payment bond is not responsible for the damages associated with the failure of the beneficiary to make a claim against the surety. *Ford Glass Ltd. v. Canada*, *1 C.L.R. 21* (Fed. Ct. Tr. Div. 1983). See *Surrogate Court Rules*, *Alta. Reg. 130/95*, rr. 13 & 26 (an executor must notify all beneficiaries of their interest under the will before filing an application for grant of probate).

78 D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 1126 (4th ed. 2012). See also *Hawkins v. Clayton*, 164 C.L.R. 539, 554 (H.C. 1988) ("It may be that there is a broad principle, founded on general standards of honesty and fair dealing, that some duty of disclosure is imposed on one who holds the property of another ... when the other does not know of his entitlement to the property and the holder has reason to believe that the other does not know of his entitlement") per Brennan, J.

79 Review of the Law of Trusts: A Trusts Act for New Zealand 103 (2013). According to the Commission, its recommendations accord with "internationally accepted trust law principles". Id. 64. See also Hawkins v. Clayton, [1988] HCA 15, para 13; 164 C.L.R. 539, 555 ("where the custodian [of a will] has reason to believe that the disclosure by him to the executor of the existence, contents or custody of the will is needed in order that the will may be made effectual, the custodian is under a duty promptly to take reasonable steps to find, and to disclose the material facts to, the executor") per Brennan, J.

80 *In re Short Estate*, *[1941] 1 W.W.R. 593*, 596 (B.C. Sup. Ct.) (had the trustee informed the guardian of the beneficiary of her interest in the trust property she may have taken steps that would have "avoided the whole or a substantive part of the capital loss ... and the whole or a substantial part of the operating loss") & D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 1126, 1132 & 1134 (4th ed. 2012). See also *Hawkins v. Clayton*, [1988] HCA 15, para 13; 164 C.L.R. 539, 555 ("where the custodian [of a will] has reason to believe that the disclosure by him to the executor of the existence, contents or custody of the will is needed in order that the will may be effectual, the custodian is under a duty promptly to take reasonable steps to find, and to disclose the material facts to, the executor") per Brennan, J.

81 *SAS Trustee Corp. v. Cox*, [2011] NSWCA 408, para 149 ("I cannot see how a trustee is in breach of a duty it owes to a beneficiary by failing to give the beneficiary information that the trustee has no reason to believe will be of the slightest practical use to the beneficiary").

82 E.g., *Segelov v. Ernst & Young Pty Ltd*., [2015] NSWCA 156, para 131 (the trustee automatically, and without any act on the part of the beneficiary required, deposited the beneficiary's trust payment into a joint bank account owned by the beneficiary and her husband).

83 See *Hawkins v. Clayton*, [1988] HCA 15, para 13; 164 C.L.R. 539, 554 ("when disclosure [of the fact that a solicitor has a will in his or her possession] is required, the steps which need to be taken are those which are reasonable in the circumstances, including the contents of the will, the custodian's knowledge and means of knowledge of the identity and location of the parties interested under the will and of their relationship with one another. The cost of extensive inquiries and the expected value of the estate are relevant considerations in determining what costs are reasonable") per Brennan, J. & *Segelov v. Ernst & Young Services Pty Ltd*., [2015] NSWCA 156, para 141 ("The primary judge considered, correctly in my view, that the duty of notification raised many questions as to the scope and content of the asserted obligation. ... Whether the trustee should be required to maintain some form of up to date register of beneficiary contact detail and how often it would be required to actively seek out information was left unanswered by counsel for Ms. Segelov").

84 D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 579 (4th ed. 2012).

85 Id. 579-607. See also *Schmidt v. Rosewood Trust Ltd*., [2003] UKPC 26, para 1; [2003] 2 A.C. 709, 715 (Isle of Man) ("It has become common for wealthy individuals in many parts of the world ... to place funds at their dispositions into trusts ... regulated by the law of, and managed by trustees resident in, territories with which the settlor ...has no substantial connection"); *Re a Solicitor*, [1952] Ch. 328, 332 (1951) ("as the principles of equity permeate the complications of modern life, the nature and variety of trusts ever grow"); J. Glister & J. Lee, Hanbury and Martin Modern Equity 75 (20th ed. 2015) (trusts are of "contemporary importance ... in the commercial context") & D. Pavlich, Trusts in Common-Law Canada 43 (2014) ("Today, the trust is ... significant in mutual funds, REITS and pension fund arrangements").

86 *Hawkesley v. May*, [1956] 1 Q.B. 304, 322 (1955) ("there was a duty upon ... the trustees of the Musgrave settlement ... to inform the plaintiff on attaining 21 that he had an interest in the capital and income of the trust funds of the Musgrave settlement") & *Brittlebank v. Goodwin*, L.R. 5 Eq. 545, 550 (Ch. 1868) ("Another duty [of the trustee] was to have informed the [beneficiaries] ... when they attained twenty-one, of the position of the fund and their rights").

87 *In re Short Estate*, *[1941] 1 W.W.R. 593* (B.C. Sup. Ct.).

88 *Moore v. Saunders*, 106 S.W. 2d 337, 339 (Tex. Ct. Civ. App. 1937) & *Mulford v. Mulford*, 53 A. 79 (N.J. Super. Ct. Ch. Div. 1902).

89 *[1941] 1 W.W.R. 593* (B.C. Sup. Ct.).

90 Id. 596.

91 106 S.W. 2d 337 (1937).

92 Id. 339.

93 53 A. 79 (1902).

94 Id. 83.

95 E.g., *Segelov v. Ernst & Young Services Pty Ltd*., [2015] NSWCA 156, para 36 (the trustee could reasonably conclude that a beneficiary in receipt of trust payments would be aware of their status as beneficiaries because the beneficiary had an obligation to file a tax report disclosing receipt of the payment).

96 [2015] NSWCA 156.

97 Id. para 130.

98 Id. para 3.

99 Id. paras 3 & 131.

100 Id. para 43.

101 *Dominion Bridge Co. v. Marla Construction Co*., *12 D.L.R. (3d) 453*.

102 *Dolvin Mechanical Contractors Ltd. v. Trisura Guarantee Insurance Co*., 2014 ONSC 918; 36 Contr. L.R. 4th 126.

103 *Dominion Bridge Co. v. Marla Construction Co*., 12 D.L.R. (3d) 453, 457-58 (Ont. County Ct. 1970) & *Dolvin Mechanical Contractors Ltd. v. Trisura Guarantee Insurance Co*., 2014 ONSC 918, para 57; 36 Constr. L.R. 4th 126, 138.

104 12 D.L.R. (3d) 453, 457-58 (Ont. Cty. Ct. 1970).

105 Id.

106 Id.

107 *Hawkesley v. May*, [1956] 1 Q.B. 304 (1955) & *Brittlebank v. Goodwin*, L.R. 5 Eq. 545 (Ch. 1868).

108 Id. 457.

109 2014 ONSC 918, para 57; 36 Constr. L.R. 4th 126, 138-39.

110 2014 ONSC 918, para 57; 36 Constr. L.R. 4th 126, 138 ("Prior to the enactment of the *Construction Lien Act*, it had been held that an owner/trustee/oblige[e] of a labour and material payment bond was not under a duty to give a sub-contractor information about the bond unless asked for it: *Dominion Bridge Co. v. Marla Construction* Co.").

111 Id. at para 62; 36 Constr. L.R. 4th at 139.

112 Friedman, "Stare Decisis at Common Law and Under the Civil Code of Quebec", 31 Can. B. Rev. 723, 125 (1953) ("The first, and probably, the most important part of ... [the] doctrine [of stare decisis] is the principle that all courts are bound by the decisions of superior courts in the hierarchy").

113 [1975] 1 S.C.R. 138, 152 (1974).

114 *Laporte v. The Queen*, 29 D.L.R. (3d) 651, 655 (1973).

115 *DG v. Bowden Institution*, 2016 ABCA 52, para 104 ("As no binding precedent governs, this Court must resolve this question, taking into account first principles"); *Re Murphy's Settlement*, [1998] 3 All E.R. 1, 10 (H.C.) ("The somewhat unusual, if simple, facts of the present case ... do not seem to have come before the court until now. I must therefore reach my conclusion with such assistance as I can obtain from the authorities cited to me and from first principles") & *Hartigan Nominees Pty. Ltd. v. Rydge*, 29 N.S.W.L.R. 405, 417 (C.A. 1992) (in the absence of binding authority the Court considered the "competing arguments of principle or policy").

116 See *McMorran v. McMorran*, 2014 ABCA 387, para 56; 378 D.L.R. (4th) 103, 137 ("The fact that something has never been done before is not sufficient reason not to do it if the language of the *Special Forces Pension Plan* allows it and the outcome is not inconsistent with the general structure of the pension plan") per Wakeling, J.A. & O. Holmes, Speeches 68 (1896) ("we rely upon ... the fact that we never thought of any other way of doing things, as our only warrant for rules which we enforce with as much confidence as if they embodied revealed wisdom").

117 *International Association of Machinists and Aerospace Workers, Local Lodge 1579 v. L-3 Communications Spar Aerospace Ltd*., 201 L.A.C. (4th) 85, 140 (Wakeling, Q.C. 2010).

118 Holmes, "The Path of the Law", 10 Harv. L. Rev. 457, 469 (1897) ("a body of law is more rational ... when every rule it contains is referred articulately and definitely to an end which it subserves, and when the grounds for desiring that end are stated ... in words").

119 D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 578-79, 1126, 1132 & 1134 (4th ed. 2012); Flannigan, "Business Applications of the Express Trust", 36 Alta. L. Rev. 630, 636 (1998); D. Hayton, P. Matthews & C. Mitchell, Underhill and Hayton Law Relating to Trusts and Trustees 813 (8th ed. 2010); Mason, "The Place of Equity and Equitable Remedies in the Contemporary Common Law World" 110 Law Q. Rev. 238, 238 (1994) & G. Bogert, Trusts 352 & 494 (6th ed. 1987).

120 "Equity's Place in the Law of Commerce", 114 Law Q. Rev. 214, 214 (1998). See also Mason, "The Place of Equity and Equitable Remedies in the Contemporary Common Law World", 110 Law Q. Rev. 238, 238 (1994) ("Equitable doctrine and relief have penetrated the citadels of business and commerce, long thought, at least by common lawyers, to be immune from the intrusion of such alien principles").

121 They might be more demanding in some fact patterns. E.g., *Segelov v. Ernst & Young Services Pty Ltd*., [2015] NSWCA 156, para 141 (the Court suggested that it would be impractical to require the trustee to maintain an up-to-date record of contact data for several hundred beneficiaries when it was reasonable to assume that the partners who designated the beneficiaries would notify the person they designated as beneficiaries of their status). It is helpful in

assessing the merits of a proposed norm to consider its consequences. *Hawkins v. Clayton*, [1988] HCA 15, para 9; 164 C.L.R. 539, 546 ("The consequences for other cases that may flow from a different conclusion could be far reaching").

122 *Valard Construction Ltd. v. Bird Construction Co*., *2015 ABQB 141*.

123 Id. para 79.

124 Id. para 85.

125 Id. para 89.

126 Id.

127 On occasion the Supreme Court of Canada has given an important decision orally. E.g., *Sauvé v. Canada*, *[1993] 2 S.C.R. 438* (prisoners have the right to vote in federal elections).

128 E.g., *The Queen v. Barrett*, *54 C.C.C. (2d) 75*, 79 (Alta. C.A. 1980) (the Court declined to follow a unanimous decision of the Saskatchewan Court of Appeal on the same point).

129 The doctrine of *stare decisis* and judicial comity promotes certainty. *Sheddon v. Goodrich*, 32 Eng. Rep. 441, 447 (Ch. 1803) ("it is better that the law should be certain, than that every Judge should speculate upon improvements in it"). The business community may order its affairs on the assumption that the law will continue unchanged for the period the consequences of business decisions will be in effect. *Canada v. Craig*, *[2012] 2 S.C.R. 489*, 499 (the failure of the Federal Court of Appeal to follow a previous tax decision introduces undesirable consequences - uncertainty - into tax law); *London Street Tramways v. London County Council*, [1898] A.C. 375, 380 (H.L.) ("it is totally impossible ... to disregard the whole current of authority upon this subject ... [and to relitigate that] which has already been decided. ... [T]here may be a current of opinion in the profession that ... a judgment was erroneous but what is that occasional interference with what is perhaps abstract justice as compared with the ... disastrous inconvenience ... of having each question subject to being reargued and the dealings of mankind rendered doubtful by reason of different decisions, so that in truth and fact there would be no real final Court of Appeal?"); *Midland Silicones Ltd. v. Scruttons Ltd*., [1962] A.C. 446, 467-68 (H.L. 1961) (Viscount Simonds rebuked Lord Denning for attempting to alter the privity of contract principle: "Nor will I easily be led by an undiscerning zeal for some abstract kind of justice to ignore our first duty, which is to administer justice according to law, the law which is established for us by Act of Parliament or the binding authority of precedent"). See Holmes, "The Path of the Law", 10 Harv. L. Rev. 457, 469 (1897) ("It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past").

130 *Sattva Capital Corp. v. Creston Moly Corp*., *2014 SCC 53*, para 51; *[2014] 2 S.C.R. 633*, 659 ("One central purpose of drawing a distinction between questions of law and those of mixed fact and law is to limit the intervention of appellate courts to cases where the results can be expected to have an impact beyond the parties to the particular dispute"); *Municipal District of Bighorn No. 8 v. Bow Valley Waste Management Commission, 2015 ABCA 127*, para 7; *13 Alta. L.R. (6th) 342*, 345 ("correctness remains the appropriate standard of review when interpreting standard form contracts since the results would be expected to have an impact beyond the parties to a particular dispute and be of precedential value") & *Vallieres v. Vozniak*, *2014 ABCA 290*, para 13; *377 D.L.R. (4th) 80*, 89 ("[the] interpretation [of this standard form contract] is of general importance beyond this dispute, any decision on its proper interpretation has great precedential value, and the primary objective should be certainty. It is untenable for this contract to be given one interpretation by one trial judge, and another by a different one").

131 New Zealand Law Commission, Review of the Law of Trusts: A Trusts Act for New Zealand 93-94 (2013) (some duties of a trustee are paramount, will be incorporated into every trust, and cannot be diminished by a trust instrument; other trustee duties, although important, may be modified by unequivocal provisions in the trust instrument). This is also the norm in other aspects of trust law. For example, as a general rule, a settlor has no power to revoke a trust unless the trust instrument expressly bestows this right on the settlor. G. Bogert, Trusts 47 (6th ed. 1987). Nor may the settlor, trustee and beneficiaries alter the trust terms unless the trust instrument sanctions revisions. G. Bogert, Trusts 514 & 527 (6th ed. 1987). But cf *Segelov v. Ernst & Young Pty Ltd*., [2015] NSWCA 156, para 113 (the trustee has no obligation to inform a beneficiary or potential beneficiary of a trust unless the trust instrument imposes this obligation).

132 E. Gillese, The Law of Trusts 187 (3d ed. 2014) ("exoneration clauses ... excuse ... trustees for losses caused by any reason except fraud, wilful dishonesty, and knowing breaches of trust"); D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 982 (4th ed. 2012) ("In the absence of legislative intervention in England and Canada ... [exculpatory clauses] are valid, almost without doubt") & G. Bogert, Trusts 337 (6th ed. 1987) ("A settlor may reduce the amount of

skill and prudence required of his trustee by a provision in the trust instrument, as where he excludes liability for errors of judgment or for any conduct other than a willful breach").

133 Flannigan, "Business Applications of the Express Trust", *36 Alta. L. Rev. 630*, 632 (1998) ("The settlor and trustee remain free, in every case, to negotiate specific modifications to the general default content of the obligation to accommodate their particular arrangement"); D. Waters, M. Gillen & L. Smith, Waters' Law of Trusts in Canada 912 (4th ed. 2012) ("the 'substratum' obligations which attach to every trustee are fundamental duties arising out of the essence of the relationship of trustee and beneficiary. They ... can be displaced only to the extent to which the legislature of the jurisdiction so decrees or a settlor in his trust modifies their operation") & G. Bogert, Trusts 79, 334 (6th ed. 1987) ("the trustee is a fiduciary, whose obligations are not only those which he has voluntarily assumed by express agreement, but also those which the law imposes on him. ... Ordinary care, skill and prudence are normally required of trustees in the performance of all their duties, unless the trust instrument provides otherwise").

134 Flannigan, "Business Applications of the Express Trust", *36 Alta. L. Rev. 630*, 631 (1998) ("A trust will also be effective to avoid difficulties created by the operation of the doctrine of privity of contract"); D. Dal Pont & D. Chalmers, Equity and Trusts in Australia and New Zealand 420 (2d ed. 2000) ("Under the doctrine of privity of contract, only the parties to the contract can sue or be sued, whereas a beneficiary may enforce a trust despite not being a party to the trust's creation") & G. Bogert, Trusts 4 (6th ed. 1987) ("if A declares himself a trustee of property for C, C everywhere may enforce the trust against A, regardless of privity or of knowledge or consent by C").

135 *Valard Construction Ltd. v. Bird Construction Co.*, *2015 ABQB 141*, para 80.

136 New Zealand Law Commission, A Review of the Law of Trusts: A Trusts Act for New Zealand 106-14 (2013) (some trustee duties are so important that the trust instrument may not lawfully abridge them; some trustee duties are so important that they must be discharged unless the trust instrument expressly abridges them); Flannigan, "Business Applications of the Express Trust", *36 Alta. L. Rev. 630*, 636 (1998) ("If the trust form is selected, the general rules of trust law apply") & *Mucklow v. Fuller*, 37 Eng. Rep. 824, 825 (Ch. 1821) (an executor who proves the will accepts the trusts that the testator imposed on the executor and "must do all which he is directed to do as executor").

137 Flannigan, "Business Applications of the Express Trust", *36 Alta. L. Rev. 630*, 636 (1998) ("Breaches of trust will attract the usual equitable remedies").

138 G. Dal Pont & D. Chalmers, Equity and Trusts in Australia and New Zealand 403 (2d. ed. 2000) ("a trust must have a *trustee* who holds legal title to the trust property") & G. Bogert, Trusts 90 (6th ed. 1987) ("a trustee is needed to administer a trust").

139 Re *Tremblay*, *48 O.L.R. 321*, 323 (H.C. 1920); *In re Hotchkys*, 32 Ch. D. 408, 418 (C.A. 1886) & *Guthrie v. Walrond*, 22 Ch. D. 573, 577 (H.C. 1883) (a legatee cannot accept the beneficial aspects of single gift and reject the burdensome aspect of the single gift) & *Federal Trust Co. v. Damron*, 124 Neb. 655, 665; 247 N.W. 589, 593 (Sup. Ct. 1933) ("A man shall not be allowed to blow hot and cold - to affirm at one time and deny at another"). See generally *Shreem Holdings Inc. v. Barr Picard*, *2013 ABQB 257*, para 49; *49 C.P.C. (7th) 419*, 431 ("The propriety of a party invoking a statutory process and then taking a position before the adjudicator who administers the process which deprives the adjudicator of his jurisdiction is in doubt"); *Iron v. Saskatchewan*, *103 D.L.R. (4th) 585* (Sask. C.A. 1993) (a party seeking leave to appeal cannot take the position before the appeal chambers judge that leave is not required because the party has an appeal as of right); *Canada v. Toombs*, *[1946] 4 D.L.R. 516*, 519 (Ont. Cty. Ct.) ("Having requested the Court to decide the action upon the provisions of the *Highway Traffic Act* it is not open to the Crown to contend that the provisions of the Act are not binding upon it. It cannot approbate and reprobate") & *Dussault v. Brazeau Transport Inc.*, *33 di 520*, para 4 (Can. L.R.B. 1978) (an employer cannot take inconsistent positions on the constitutional jurisdiction of provincial and federal boards). See also G. Bogert, Trusts 355 (6th ed. 1987) ("Generally, the court will not permit the trustee to attack the trust") & *In re Strange's Estate*, 7 Wis. 2d 404, 407; 97 N.W. 2d 199, 200 (Sup. Ct. 1959) ("As trustee, respondents have the obligation of loyalty to their trust which is required of fiduciaries unafflicted with split personalities").

140 *Rickman v. Carstairs*, 110 Eng. Rep. 931, 935 (K.B. 1833) ("in ... cases of construction of written agreements [the question] is not what was the intention of the parties, but what is the meaning of the words they have used"); *Lubberts Estate*, *2014 ABCA 216*, n. 21; *[2014] 10 W.W.R. 41*, 66 n. 21 ("Multiparty documents cannot have multiple meanings which are a function of the subjective understandings of each party. ... There must be an enforceable meaning attached to the oral or written language which the parties acknowledge captures their consensus. It must be the product of an objective inquiry") per Wakeling, J.A.; A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 30 (2012) ("Objective *meaning* is what we are after"); G. Hall, Canadian Contractual Interpretation Law 33 (2d ed. 2012) ("It is a fundamental precept of the law of contractual interpretation that the exercise is objective rather than subjective") & S.

Waddams, The Law of Contracts 105 (6th ed. 2010) ("The principal function of the law of contracts is to protect reasonable expectations engendered by promises").

141 *Lenz v. Sculptoreanu*, *2016 ABCA 111*, para 4 ("[A court may never] give the text an implausible meaning") & A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 31 (2012) ("A fundamental rule of textual interpretation is that neither a word nor a sentence may be given a meaning that it cannot bear").

142 L. Simpson, Handbook on the Law of Suretyship 2 (1950) ("With a surety liable for the debt, the creditor has two parties against whom he may go for its collection, instead of the debtor alone").

143 *Valard Construction Ltd. v. Bird Construction Co.*, *2015 ABQB 141*, para 25.

144 *Segelov v. Ernst & Young Services Pty Ltd.*, [2015] NSWCA 156, paras 36, 43 & 152 (the trustee may reasonably have concluded that Ms. Segelov would have been aware of her status as a beneficiary - her husband would have informed her of her status as a beneficiary or her tax reporting obligations with respect to the trust payments would have informed her that she received trust payments and must have been a beneficiary) & *Mulford v. Mulford*, 53 A. 79 (N.J. Super Ct. 1902) (the Court relieved the trustee of its obligation to take reasonable measures to bring the trust's existence to the attention of the beneficiary because the trustee had reasonable grounds to believe the beneficiary's parents had informed the beneficiary of her status).

145 *Valard Construction Ltd. v. Bird Construction Ltd.*, *2015 ABQB 141*, para 22.

146 *Armitage v. Nurse*, [1998] Ch. 241, 253-54 (C.A. 1997) (the Court upheld as enforceable a term that exempted "the trustee from liability for loss or damage to the trust property no matter how indolent, imprudent, lacking in diligence, negligent or wilful he may have been, so long as he did not act dishonestly") & Flannigan, "Business Applications of the Express Trust", *36 Alta. L. Rev. 630*, 632 (1998) ("as between the trustees and the beneficiary, a 'trustee' fiduciary obligation will operate unless expressly excluded by the trust deed").

147 *Armitage v. Nurse*, [1998] Ch. 241, 253 (C.A. 1997) ("there is an irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust"); *Segelov v. Ernst & Young Services Pty Ltd.*, [2015] NSWCA 156, para 146 (a trustee cannot be relieved of the obligation to "act honestly and in good faith"); *Birmingham Trust & Savings Co. v. Ansley*, 234 Ala. 674, 678, 176 So. 465, 469 (Sup. Ct. 1937) ("Whether such stipulations [a trustee only responsible for 'wilful disregard of duty'] are void against public policy, we need not decide in this case"); J. Glister & J. Lee, Hanbury and Martin Modern Equity 479 (20th ed. 2015) ("19th century English and Scottish authorities indicated that exemption clauses ... would not protect ... [trustees] in cases of bad faith, recklessness or deliberate breach of duty"); Millett, "Equity's Place in the Law of Commerce", 114 Law Q. Rev. 214, 216 (1998) ("The view is widely held that [exculpatory] ... clauses have gone too far, and that trustees ... should not be able to rely on a trustee exemption clause which excludes liability for gross negligence") & G. Bogert, Trusts 340 (6th ed. 1987) ("To permit a trustee to hide behind an exculpatory clause and to avoid liability for bad faith, dishonesty, willful breach, and gross negligence would be against public policy, since it would encourage highly reprehensible or even criminal conduct"). See generally New Zealand Law Commission, Review of the Law of Trusts: A Trusts Act for New Zealand 103-04, 107-08 & 114 (2013).

148 Section 41 of the Trustee Act allows a court to relieve a trustee from liability for breach of trust if "the trustee has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court". See *Hawkesley v. May*, [1956] 1 Q.B. 304, 325 (1955) & *Segelov v. Ernst & Young Services Pty Ltd.*, [2015] NSWCA 156, para 60.

149 G. Bogert, Trusts 634 (6th ed. 1987) (a plaintiff-beneficiary faced with a laches defence by the defendant-trustee can only rely on ignorance of the existence of a cause of action if it took reasonable steps to protect its interests as a beneficiary") & *Redford v. Clarke*, 100 Va. 115, 123; 40 S.E. 630, 633 (Sup. Ct. 1902) ("Indolent ignorance and indifference will no more avail than will voluntary ignorance of one's rights").

150 A statute does not alter the common law unless a fair reading supports the contrary conclusion. *Crystalline Investments Ltd. v. Domgroup Ltd.*, *2004 SCC 3*, para 43; *[2004] 1 S.C.R. 60*, 75; *District of Parry Sound Social Services Administration Board v. Ontario Public Services Employee Union*, *2003 SCC 42*, para 39; *[2003] 2 S.C.R. 157*, 181; *Slaight Communications Inc. v. Davidson*, *[1989] 1 S.C.R. 1038*, 1077; *Goodyear Tire & Rubber Co. of Canada v. T. Eaton Co.*, *[1956] S.C.R. 610*, 614; *Hammond v. DeWolfe*, *2014 ABCA 81*, paras 7 & 27; *Coulter v. Co-operators Life Insurance Co.*, *2013 ABCA 295*, para 58; *367 D.L.R. 4th 724*, 740 & *Devon Canada Corp. v. PE-Pittsfield, LLC*, *2008 ABCA 393*, para 29; *303 D.L.R. (4th) 460*, 469; R. Sullivan, Sullivan on the Construction of Statutes 538-39 (6th ed. 2014) & A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 318 (2012).

151 *R.S.A. 2000, c. B-7*.

152 E.g., *Foley v. Imperial Oil Ltd.*, *2011 BCCA 262*, para 29 ("The [*Occupiers Liability*] Act provides a complete code regarding the duty of an occupier of land. Reference to earlier common law cases ... may ... result in legal error if the wrong standard of care (one based on the common law categories) is applied, rather than the statutory standard of care").

153 See *Canadian Bank of Commerce v. T. McAvity & Sons Ltd.*, *[1959] S.C.R. 478*, 482 & 484 (remedies under the lien and trust provisions of the *Mechanics' Lien Act*, R.S.O. 1950, c. 227 are independent of each other: a supplier may have no lien rights but be a beneficiary of a statutory trust); *Minneapolis-Honeywell Regulator Co. v. Empire Brass Manufacturing Co.*, *[1955] S.C.R. 694*, 703 (a contractor may be a beneficiary under the statutory trust created by s. 19 of the *Mechanics' Lien Act*, R.S.B.C. 1948, c. 205 even if it is not entitled to lien protection under the *Act*); *Harding Carpets Ltd. v. Saint John Tile & Terrazo Co.*, *24 C.L.R. 71*, 88 (N.B.Q.B. 1987) ("the right to claim against a so-called s. 3 [trust] fund [under the *Mechanics' Lien Act*, *R.S.N.B. 1973, c. M-6*] is independent of the existence of an enforceable lien under the Act") aff'd *31 C.L.R. 135* (C.A. 1988) leave to appeal denied *[1988] S.C.C.A. No. 262* *51 D.L.R. 4th vii* (1988); *Prince Edward Island Housing Corp v. Linkletter Welding Ltd.*, *2 C.L.R. 297*, 299 (P.E.I. Sup. Ct. 1983) (the Court declared that the Crown held the holdback funds under a constructive trust for the benefit of contractors unable to file a lien against Crown property); *Requip (Niagara Falls) Ltd. v. Municipality of Fort Erie*, *7 C.L.R. 134*, 138 (Ont. H.C. 1984) ("[Under Ontario's *Mechanic's Lien Act*, R.S.O. 1980, c. 261] the ... supplier has two remedies ..., one in the nature of an interest in moneys impressed with a trust in the hands of the owner or contractor ..., the other [a lien] in the nature of a real interest in the lands which have directly benefited from his work or materials. ... Both remedies are distinct and can be called into play independently") & McGuinness, "Trust Obligations Under the *Construction Lien Act*", 15 C.L.R. 208, 232-33 (1994) ("Although [trust and lien rights under the *Construction Lien Act*, *R.S.O. 1990, c. C.30*] are related, the trust and lien rights ... are separate and distinct").

154 Section 17 of the *Public Works Act*, *R.S.A. 2000, c. P-46* is in this form:

> 17(1) Every contractor shall, where practicable, display and keep displayed in a conspicuous place on the public work to which the contract relates
>
> (a) a copy of section 14, and
>
> (b) where a labour and material payment bond has been provided to the Minister, a copy of the bond.
>
> (2) The fact that a labour and material payment bond does or does not exist is to be considered public information and, if a bond does exist, any particulars of that bond are to be considered public information and that information may be made known to any person who requests the information.

155 This fact may have allowed Bird Construction to argue that it had reasonable grounds to believe that Valard Construction was aware of the bond.

156 See *Citadel General Assurance Co. v. Johns-Manville Canada Inc.*, *[1983] 1 S.C.R. 513*, 525 ("the respondent points out, correctly in my view, that there is no requirement in the bond itself that a claimant must have recourse to other remedies before claiming on the bond") & *LaRiviére Inc. v. Canadian Surety Co.*, [1973] C.A. 150, 155 (Que.) ("I do not read this bond ... as imposing on appellant the duty of subrogating respondent in the rights which it might have had under ... [the Civil Code], and I consider as irrelevant the fact that it did not or could not do so"].

157 *Valard Construction Ltd. v. Bird Construction Co.*, *2015 ABQB 141*.

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Beck v. Otto, [2017] A.J. No. 981

Alberta Judgments

Alberta Court of Queen's Bench

(Surrogate Matter)

Judicial Centre of Edmonton

J.T. Henderson J.

Heard: September 5 and 7, 2017.

Judgment: September 26, 2017.

Docket: ES03 143714

Registry: Edmonton

[2017] A.J. No. 981 | 2017 ABQB 569 | 284 A.C.W.S. (3d) 221 | 30 E.T.R. (4th) 85 | 2017 CarswellAlta 1723

IN THE MATTER OF the Estate of Elsie Dorothy Beck Between Richard Beck and R. Beck Developments Ltd., Plaintiff, and Audrey Doreen Otto and Marolyn Jeanette Beck, Defendant

(117 paras.)

Case Summary

Real property law — Interests in land — Equitable interests — Resulting trusts — Action by Richard Beck and his company for declaration of trust interest over lands owned by his mother Elsie at her death dismissed — Elsie transferred lands, among others, to Richard's company in 1979 to facilitate subdivision and sale — Company transferred home and farm on property back to Elsie in 1982 — Trust arrangements referenced in 1982 transfer related to 1979 transaction, purchase price for which was not proven to have been paid — Richard failed to take steps over 26 years to assert his ownership of home, while Elsie's granddaughter lived there and made extensive renovations — Statute of Frauds, ss. 7, 8.

Action by Richard Beck and his company, R. Beck Developments, for a declaration of express, implied or resulting trust in certain lands arising from a transfer of land from Beck Developments to Elsie Beck in 1982. Elsie and Emil Beck farmed the lands, where they also had their home and raised their three children, Richard, Audrey and Marolyn. Emil died in 1974. The lands were transferred to Elsie according to the terms of his will. Elsie transferred the lands to Beck Developments in 1979 for $100,000. A caveat was filed on title in 1979 on behalf of Elsie as an unpaid vendor. Beck Developments subdivided the lands into 26 residential lots and a 53-acre farm. Elsie agreed to postpone her caveat to a $200,000 mortgage obtained to fund development of the lands. She remained in her residence rent-free until 1991, but she paid the property taxes. In her 1981 will, Elsie appointed Audrey and Marolyn as executors and trustees, giving them all her property. In 1982, Beck Developments executed a transfer of land conveying Elsie's lot and the farm parcel to Elsie for one dollar, pursuant to trust arrangements between the parties. Elsie signed a discharge of caveat in relation to the unpaid vendor's lien. When Elsie relocated to a retirement home in 1991, Audrey's daughter and her husband moved into Elsie's home. They did not pay rent, but did pay taxes, insurance and maintenance costs. They made substantial improvements to the home over their 26 years of residence. Richard continued to farm the 53-acre parcel until 2016. He paid the taxes until 2011. Elsie relocated to a higher-care facility in 2004. She died in 2012. Her granddaughter's family remained in her home. Richard continued to farm. He filed a caveat, claiming a trust interest in the farm parcel and the home.

HELD: Action dismissed.

The trust arrangements referenced in the 1982 transfer of property from Beck Developments to Elsie were those relating to Elsie's transfer of the property in 1979. There was no evidence to prove the existence of a trust imposed on Elsie. Richard failed to prove that the $100,000 purchase price for the property had ever been paid. He failed to mention that he considered himself the beneficial owner of the home while Elsie's granddaughter made extensive renovations to the home. The 1982 transfer did not create an express or implied trust in favour of Richard or Beck Developments. The presumption of resulting trust was rebutted where the consideration for the transfer was the 1979 agreement by way of which Elsie transferred the property to Beck Developments to facilitate subdivision.

Statutes, Regulations and Rules Cited:

Statute of Frauds, 1677 (U.K.), 29 Charles II, c. 3, s. 7, s. 8

Counsel

Mr. Ben A. Guido, for the Plaintiff.

Mr. David C. McGreer, for the Defendants.

Reasons for Decision

J.T. HENDERSON J.

I INTRODUCTION

1 The Plaintiffs claim an interest in land based on an express, implied or resulting trust arising from a transfer of land from R. Beck Developments Ltd. (Beck Developments) to Elsie Beck (Elsie) in November 1982.

2 By Order dated April 26, 2016, Macklin J. directed that this matter be set for trial for a determination of the following issues:

a) Does Richard Beck or R. Beck Developments Ltd. have an interest in the Estate Lands?

b) Is the Estate under a trust obligation to transfer the Estate Lands to Richard Beck or R. Beck Developments Ltd.?

3 The Order also directed that Richard Beck (Richard) and Beck Developments assume the role of Plaintiffs at the trial of these issues.

4 For the reasons which follow, I find that neither Richard nor Beck Developments has any interest in the lands, and that the Estate of Elsie Beck is under no trust obligation to transfer the lands to either of them.

II BACKGROUND

5 The following background facts are not in dispute.

A Transfer of SW Quarter to Elsie

6 Elsie and her husband Emil Beck (Emil) farmed lands in Strathcona County near Sherwood Park, Alberta, including lands legally described as SW 31-51-21-W4 (the SW Quarter) on which they built their home.

7 Elsie and Emil had three children, Richard, Audrey Otto (Audrey) and Marolyn Beck (Marolyn).

8 Emil died on February 20, 1974. In accordance with his Last Will and Testament, the SW Quarter was transferred to Elsie.

B Sale of SW Quarter to Beck Developments

9 On or about June 27, 1979, Elsie transferred the SW Quarter to Beck Developments (the 1979 Transfer). The consideration disclosed on the transfer and in the affidavit of transferee was $100,000.

10 Beck Developments was, at all material times, controlled by Richard.

11 At the time of the 1979 Transfer, Elsie was approximately 64 years old and Richard was approximately 32 years old. Richard is now 70 years old.

12 No evidence was tendered to suggest that $100,000 was the fair market value of the SW Quarter in 1979. Nor was there any evidence that the fair market value was more or less than $100,000 at that time.

13 Donald Ostry was a lawyer who had a long-term relationship with Richard and acted on behalf of Beck Developments in relation to the 1979 Transfer.

14 The 1979 Transfer was executed by Elsie before Donald Ostry who then swore the affidavit of execution which is attached to the transfer. I conclude that Donald Ostry acted on behalf of Elsie in relation to this transfer, notwithstanding that he was also acting on behalf of Beck Developments and Richard.

15 There is no evidence that Elsie received independent legal advice in relation to this transfer.

16 Donald Ostry and his law firm have not been able to locate any files in relation to the 1979 Transfer. Furthermore, Mr. Ostry "cannot remember anything about a written land agreement" in relation to the transaction.

17 A caveat dated June 29, 1979 was signed by Donald Ostry, on behalf of Elsie, and was filed with the Land Titles Office shortly thereafter. The caveat claimed an interest in the SW Quarter as an unpaid vendor (the Unpaid Vendor's Lien).

18 Apart from the transfer of land, the affidavit of transferee and the caveat, no documentation describing the terms of the agreement relating to the 1979 Transfer was entered into evidence.

C Subdivision of the SW Quarter

19 After taking title to the SW Quarter, Beck Developments subdivided the lands into 26 residential lots (the

Residential Lots) and a 53 acre farm parcel (the 53 Acre Parcel). The Subdivision Plan was filed with the Land Titles Office on November 23, 1979, although much of the subdivision work had been done well before the 1979 Transfer. For example, the survey of the subdivision was undertaken by the surveyors, Stewart Weir Stewart, in the period from March to May 1979.

20 As part of the subdivision process, a mortgage in the amount of $200,000 was obtained from the Union Centre Savings and Credit Union. This mortgage was registered against title to the SW Quarter on August 24, 1979. The caveat filed on Elsie's behalf in relation to the Unpaid Vendor's Lien was postponed to the mortgage. The postponement was signed by Elsie on August 14, 1979. Richard was the witness to Elsie's signature and he swore the affidavit of execution on August 14, 1979, which was in turn commissioned by Mr. Ostry.

21 There is no evidence as to whether the agreement to postpone the caveat was a term of the agreement in relation to the 1979 Transfer.

22 There is no evidence as to whether Elsie obtained independent legal advice in relation to the postponement.

23 When the Subdivision Plan was filed on November 23, 1979, the mortgage and the caveat were registered against each of the titles in the subdivision.

24 One of the Residential Lots, Block 1 Lot 20 (Lot 20), consisted of that portion of the SW Quarter on which Emil and Elsie had built their home. Notwithstanding that she was not registered on title after June 29, 1979, Elsie continued to live in the home on Lot 20 until 1991. Elsie did not pay rent in relation to her occupation of Lot 20, but she did pay the property taxes.

25 Apart from Lot 20, all of the Residential Lots were sold by Beck Developments during the period from October 28, 1980 to May 2004. Donald Ostry acted on behalf of Beck Developments in relation to most, if not all, of the sales of the Residential Lots.

D Last Will and Testament of Elsie

26 In February 1981, Elsie signed her Last Will and Testament appointing Audrey and Marolyn as the Executors and Trustees. Elsie's Will gave all of her property to her Trustees upon a number of trusts including the following:

> 2(a) To carry out the terms of the agreement dated June 27, 1979 I entered into with R. Beck Developments regarding the lands and premises legally described as SW 1/4 SEC. 31-51-21-4.

27 Audrey and Marolyn are the residuary beneficiaries under Elsie's Will. No provision is made for Richard in Elsie's Will.

28 Elsie's Will was prepared by a lawyer, Wendy Hinz, who has no memory of Elsie, Elsie's Will or the agreement referred to in clause 2(a) of the Will.

29 The Will is ostensibly dated February 30, 1981. The parties acknowledged the error on the face of the Elsie's Will in relation to the date of execution. They did not present any argument as to the actual date of the execution of the Will, nor was there any suggestion that the wrong date on the Will affects its validity. I find that Elsie's Will was executed in or about the month of February 1981, and the exact date of execution is immaterial in relation to the issues before the Court.

E Transfer of Lot 20 and the 53 Acre Parcel to Elsie

30 On November 15, 1982, Beck Developments executed a Transfer of Land conveying Lot 20 and the 53 Acre Parcel to Elsie (the 1982 Transfer).

31 On December 15, 1982, Richard swore the affidavit of transferee as agent for Elsie. In this affidavit, Richard swore that the consideration for the transfer was:

> ...ONE DOLLAR ($1.00) and pursuant to trust arrangements made between the parties, the property was transferred from Elsie Doroth (sic) Beck to R. Beck Developments Ltd. to facilitate subdivision ...

32 The consideration described in the 1982 Transfer was identical to that which was sworn to in the affidavit of transferee. The 1982 Transfer was registered with the Land Titles Office on January 14, 1983.

33 No explanation was provided as to why the affidavit of transferee was sworn one month after the 1982 Transfer or why registration did not take place until 2 months after the 1982 Transfer.

34 Donald Ostry acted as the lawyer for Beck Developments in relation to the 1982 Transfer. Mr. Ostry has now retired and his law firm has not been able to locate any files in relation to the transactions which relate to these proceedings. The affidavit of transferee in relation to the 1982 Transfer was, however, sworn by Richard before Mr. Ostry who then commissioned the affidavit.

35 I find that Mr. Ostry was acting on behalf of Elsie in relation to the 1982 Transfer, notwithstanding that he was also acting on behalf of Beck Developments.

36 There is no evidence that Elsie received any independent legal advice in relation to the 1982 Transfer.

37 Elsie signed a discharge of caveat in relation to the Unpaid Vendor's Lien with respect to Lot 20 and the 53 Acre Parcel. The affidavit of execution was sworn by Richard on June 13, 1983 and the discharge was filed with the Land Titles Office on June 14, 1983. The precise date on which Elsie signed the discharge is unclear. The discharge does not refer to the specific date of execution but purports to be dated "February 1983". The affidavit of execution was originally prepared as if it would be sworn in February 1983 but the February date was struck out and a new date of execution was inserted, June 13, 1983. No evidence was tendered to explain this apparent discrepancy.

F Elsie's Move to a Retirement Home in 1991

38 Elsie continued to live in the home on Lot 20 until 1991 when, at age 76, she moved to a retirement home, Lakeside Legion Manor in Sherwood Park. Almost immediately thereafter, Elsie's granddaughter (Audrey's daughter), Shelly Chalifoux and Shelly's husband moved into the home on Lot 20. Shelly did not pay any rent in relation to her occupancy of Lot 20 but she did pay for the taxes, insurance and maintenance.

39 Shelly and her husband have lived continuously in the house on Lot 20 for more than 26 years and have made substantial improvements over the years.

40 Richard continued to farm the 53 Acre Parcel and received all the income from the 53 Acre Parcel until approximately 2016. He paid the taxes on the 53 Acre Parcel until 2011, but not thereafter.

41 In approximately 2004 at age 89, Elsie moved from Lakeside Legion Manor to Clover Bar Lodge to receive greater assistance as her health was declining.

G Elsie's Death on January 12, 2012

42 Elsie died on January 12, 2012 when she was 97 years old. At the time of her death, Elsie continued to be the registered owner of the 53 Acre Parcel and Lot 20.

43 After Elsie's death, Shelly continued to reside with her husband on Lot 20. As was the case prior to Elsie's death, Shelly did not pay any rent but did pay for the taxes, insurance and maintenance.

44 After Elsie's death, Richard continued to use the 53 Acre Parcel for his own farming operations or to rent to other farmers. He collected all revenue from the 53 Acre Parcel until approximately one year ago. However, he has not paid any property taxes in relation to the 53 Acre Parcel since Elsie's death.

45 On December 11, 2014, Richard filed a caveat against title to Lot 20 and the 53 Acre Parcel as registration number 142421842. Richard's caveat claimed that he had the following interest:

> ... an interest as beneficial owner pursuant to a Resulting Trust or Trust Arrangement that created an interest in lands with the previous owner, R. Beck Developments Ltd., and with the present owner, Elsie Dorothy Beck ...

III TESTIMONY REGARDING A TRUST

46 The Plaintiffs argue that the creation of a trust in relation to Lot 20 and the 53 Acre Parcel is supported not only by the documents filed at the Land Titles Office which were entered into evidence but also by the *viva voce* evidence of Richard and Judy.

A Richard's Evidence

47 Richard testified that the 1979 Transfer was arranged so that he and Beck Developments could undertake a subdivision of the SW Quarter. He testified that the consideration referred to in the 1979 Transfer ($100,000) was paid and that there were no other terms in relation to the transaction.

48 Richard also testified regarding the circumstances of the 1982 Transfer. He explained that the transfer was made for two reasons:

1. Protection From Potential Creditors - Richard testified that interest rates were high at the time and he was involved in a number of businesses, including buying and selling houses. He was also involved in the purchase, rebuilding and sale of aircraft. He testified that he wanted Elsie to hold the land for him "in case he got into trouble". Thus, he testified that he was concerned about his potential exposure to future creditors. He acknowledged that he did not have any creditors at the time of the 1982 Transfer.
2. Transfer to Elsie was the "Right thing to do" - Richard testified that he liked his mother and "she was very good to us". As a result, he wanted his mother to live in a good home, and he thought transferring the title to her would be "the right thing to do".

49 In direct examination, and in response to a very leading question, Richard testified that his expectation was that the land would come back to him and that Elsie was aware of that expectation. Richard explained that he had this expectation based on statements which Elsie had made to him.

50 With respect to when the lands would be conveyed to him, Richard testified that this would occur on Elsie's death, although he was not consistent in this explanation.

51 The Plaintiffs argue that this evidence supports the creation of an express or implied trust.

B Judy's Evidence

52 Richard's wife Judy was not directly involved in either the 1979 Transfer or the 1982 Transfer. Nevertheless, she does have a memory of some of the circumstances surrounding these transactions.

53 She recalled discussions with Richard and Elsie in the late 1970s regarding the purchase of the SW Quarter which was to be subdivided. She recalled that the purchase price was $100,000.

54 Judy also testified that she was aware of the 1982 Transfer. She testified that she understood the reason for this transfer was "for her to keep it for us for safekeeping" so that "if something happened we would not lose the whole quarter". Judy testified that she obtained this information from discussions with Richard and also with Elsie. She did not explain when, where, or under what circumstances these discussions took place.

55 The Plaintiffs argue the Judy's evidence supports the creation of an express or implied trust.

IV ISSUES

56 The Court must determine the following issues:

1) Does either Richard or Beck Developments have an interest in Lot 20 or the 53 Acre Parcel by one of an express, implied or resulting trust?
2) Does the Estate of Elsie Beck have an obligation to transfer Lot 20 or the 53 Acre Parcel to either Richard or Beck Developments?

V LAW

A Express or Implied Trust

57 For a trust to come into existence, three essential characteristics are required: certainty of intention (the language of the alleged settlor must be imperative), certainty of property (the subject matter of the trust must me certain) and certainty of objects (the objects of the trust must be clearly delineated -- there must be no uncertainty as to whether a person is a beneficiary): DWM Waters, *The Law of Trusts in Canada*, 4th ed (Toronto: Carswell, 2012) at 19-20; ***Lubberts Estate (Re)***, *2014 ABCA 216* at paras 49-50, *98 ETR (3d) 1*.

58 An express trust is created when one person (the settlor) makes it clear from his or her words or acts that property is intended to be settled to another person (the trustee) in favour of a third person (the beneficiary). If the settlor clearly and specifically says that the property is to be held on trust, then an express trust will have been created. If the settlor's language must be construed in order for its legal meaning to be discovered, and it is found that a trust was intended, then the settlor will have created a trust arising by implied intent: Waters at 19-20; ***Lubberts*** at para 50).

59 When considering whether a trust has been created it is necessary to determine the intention of the settlor at the time that the property was transferred. Evidence of intention subsequent to the transfer is not directly relevant to the intention at the time of transfer. However subsequent conduct by a settlor can provide circumstantial evidence as to the earlier intention: ***Pecore v Pecore***, *2007 SCC 17* at paras 56 to 59 *[2007] 1 SCR 795*.

B Resulting Trust

60 A resulting trust is imposed by law in certain specific circumstances, including where land is transferred by one person to another for no consideration. The underlying notion is that a trust is imposed to return property to the person who transferred away legal title to a property while still intending to retain the benefit of it.

61 Where a transfer is made for no consideration, a rebuttable presumption of resulting trust arises and the onus shifts to the transferee to rebut the presumption. The evidence required to rebut a presumption of resulting trust is evidence of the transferor's contrary intention on the balance of probabilities. The ultimate question in assessing

whether a resulting trust arose is whether the transferor intended to transfer full equitable and legal title to the transferee notwithstanding that there was no consideration: ***Pecore***, *supra* at paras 24-25, 43, 70.

62 The modern definition of "consideration" is some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other: GHL Fridman, *The Law of Contract in Canada*, 6th ed (Toronto: Carswell, 2011) at 83.

C Need for Corroboration

63 Section 11 of the *Alberta Evidence Act*, RSA 2000, c A-18 provides that a party in an action against executors of a deceased person shall not obtain a judgment on that party's own evidence in respect of any matter occurring before the death of the deceased person, unless the evidence is corroborated by other material evidence.

64 Section 11 must be read restrictively in the sense that the evidence relied on as corroboration need not completely prove an agreement or go so far as the plaintiff's evidence, but it must make the plaintiff's evidence more probable or appreciably help the Court to believe one or more of the material statements. Corroboration can consist of circumstantial evidence and fair inference; it suffices if the testimony produces inferences or probabilities tending to support the truth of the plaintiff's statement: ***Stochisky v Chetner Estate***, 2003 ABCA 226 at para 29, 330 AR 309.

D Statute of Frauds

65 Pursuant to s 7 of the *Statute of Frauds*, 1677 (UK), 29 Charles II, c 3, which forms part of the law of Alberta, express trusts relating to land which are not in writing are void and of no effect.

66 However, the requirement for writing does not apply to a resulting trust: s 8 of the *Statute of Frauds*; ***Singh v Kaler***, 2017 ABCA 275, [2009] A.J. No. 1310 at para 7.

VI ANALYSIS

A Do the Plaintiffs have an interest in Lot 20 or the 53 Acre Parcel?

1 Are the lands subject to an express or implied trust?

67 The Plaintiffs argue that they have an interest in the lands because the 1982 Transfer was executed by Beck Developments in circumstances which created an express or implied trust imposing on Elsie obligations to hold Lot 20 and the 53 Acre Parcel in trust for their benefit and to re-convey the land back to them at some point.

68 The evidence available to determine whether an express or implied trust arose is quite limited. The only document in evidence which was executed by Beck Developments in relation to the alleged trust is the 1982 Transfer, dated November 15, 1982. It specifically described the consideration for the transfer as:

> "...ONE DOLLAR ($1.00) and pursuant to trust arrangements made between the parties, the property was transferred from Elsie Doroth (sic) Beck to R. Beck Developments Ltd. to facilitate subdivision ..."
>
> (emphasis added)

69 While the consideration specifically refers to "trust arrangements" I conclude that these are not trust arrangements which were created by the 1982 Transfer. Instead, on the clear wording of the document, the "trust arrangements" relate to the transfer from Elsie to Beck Developments "to facilitate subdivision". This occurred in 1979 and not in 1982.

70 As a result, I conclude that the wording of the 1982 Transfer neither confirms the presence of a trust imposed

on Elsie nor does it contradict the existence of a trust. The 1982 Transfer is not helpful in determining whether an express or implied trust was created at the time of the 1982 transfer.

A Credibility of Richard

71 Richard testified that he and Beck Developments were "one and the same". It is apparent that he was the operating mind of Beck Developments. As a result, an assessment of his evidence is very important in determining whether a trust was created.

72 The events relating to the 1979 Transfer and the 1982 Transfer took place more than 34 years ago. Given the time that has passed, I have concerns with respect to the reliability of Richard's evidence. Richard had no notes to refresh his memory, nor did he have documents which described the transactions other than the documents obtained from the Land Titles Office. He and his wife did keep a ledger of payments made in relation to the transactions but that record was destroyed 10 to 15 years ago. His lawyer has no memory of the transactions in relation to the lands, and the law firm file has not been found.

73 Thus, Richard relied almost exclusively on his memory from decades ago when testifying. In these circumstances, it would be expected that his evidence would contain some deficiencies regarding dates, times, meetings and other details. For this reason, Richard's evidence is unreliable in some respects.

74 More significantly, however, I also have concerns regarding the credibility of Richard's evidence.

75 The manner in which Richard testified was of concern. He often testified as to his "position" in relation to some important events rather than his actual memory of the events. For example, Richard testified that Elsie made statements at the time of the 1982 Transfer regarding her obligations in relation to the transfer. This was important evidence because the contemporaneous nature of Elsie's statement was a live issue. But later in cross-examination he acknowledged that he did not remember whether Elsie was actually present when the 1982 Transfer was signed. The evidence is clear that Richard swore the affidavit of transferee on Elsie's behalf, although this was done one month after the execution of the transfer and registration of the 1982 Transfer was delayed for a further month. There is simply no evidence that Elsie was present at that time of the execution of the transfer or at the time that the affidavit of transferee was sworn. I conclude that Elsie was not present at the time of the 1982 transfer and she did not make any contemporaneous statements. Richard's evidence that she was present was simply an assertion of his "position" on an important point and was not evidence as to his memory of the facts.

76 Richard swore in the 1979 affidavit of transferee that the $100,000 purchase price had been "paid" at the time the affidavit was sworn in 1979. At trial, he testified that the $100,000 purchase price was not actually paid at the time of the 1979 Transfer but was in fact paid over time from the sale of some of the Residential Lots and from the sale of other assets. This was an appropriate acknowledgment and proper explanation for the error in the affidavit of transferee. However, later in his evidence he resiled from this explanation and testified that: "I paid for it back when I first bought it". He was testifying as to his "position" rather than as to the facts.

77 Richard also testified emphatically that the $100,000 purchase price in relation to the 1979 Transfer had been paid before the time of the 1982 Transfer. He based this assertion on the financial records which were maintained by his wife to record all of their financial transactions. He relies on these financial records despite the fact that they had been thrown out approximately 10 to 15 years ago. Judy also testified that she maintained the financial records in relation to these transactions and confirmed that she threw them out 10 to 15 years ago. She testified the $100,000 had been paid but she was not nearly so definitive with respect to when the purchase price had been paid. She initially testified that this was in 1982 but it was obvious by the way in which she answered this question that she had little confidence in the answer. On further cross-examination she testified that the final payment of the $100,000 was tied to some unspecified time before a "slow down" in sales. However when directly asked whether the purchase price had been paid by the time of the "slow down" of the sales, she candidly responded by saying that "she thought so" but was not able to be more specific.

78 The documentary evidence does not support the conclusion that the $100,000 purchase price had been fully paid by 1982. The discharges of the caveats for the Unpaid Vendors Lien were not signed or filed in 1982 but instead were discharged in a piecemeal fashion as the Residential Lots were sold after 1984. Finally, on August 31, 1992, the caveats were discharged on all of the remaining unsold Residential Lots.

79 I find that the $100,000 purchase price had not been completely paid at the time of the 1982 Transfer. As a result, I conclude that Richard's assertion to the contrary is not correct. Again, he was simply testifying as to his "position" and not as to his memory of facts.

80 Some of Richard's evidence was simply unbelievable. He was aware that Shelly and her husband moved into the home on Lot 20 in 1991. Richard lived across the road on the adjacent quarter and was clearly aware of her presence there. At no time did Richard ever tell Shelly that he was the beneficial owner of Lot 20 or that Lot 20 would be transferred to him at some point. Nor did he seek the payment of any rent. Richard simply stood by and watched as Shelly and her husband made significant improvements to the lands, including the construction of outbuildings and an elaborate western saloon for holding family functions and other events. He explained that he did not tell Shelly that the land would ultimately revert to him because Shelly was an excellent "house sitter". But, Richard never did tell Shelly that she was his "house sitter". Richard's explanation was simply not believable.

81 Further, Richard testified that from the time of the 1982 Transfer until the present dispute arose in 2014 (32 years later), he did not tell his sisters Audrey and Marolyn that the lands would revert to him. His explanation was that he did not get along with his sisters and that he did not speak to them during that time. His evidence is contrary to other evidence which I do accept that Richard attended a number of family functions between 1982 and 2014, including functions on Lot 20 at the western saloon which Shelly and her husband had constructed in 2011. Audrey and Marolyn were present at some of those functions. They both testified that their relationship with Richard was good. I find that Richard did attend several family functions and interacted with both Audrey and Marolyn. I do not believe Richard's evidence on this point and I conclude it was simply an attempt to explain why he had not made any disclosure to his sisters regarding his assertion as to ownership of the lands.

82 Richard testified that he did not take any steps for more than two years after Elsie's death to regain title to the land. He testified that he was simply waiting for his sisters to transfer title to him. This explanation is internally inconsistent with his other evidence. He testified that he did not talk to his sisters and did not tell them that he was the beneficial owner of Lot 20 and the 53 Acre Parcel. His evidence does not explain why he would expect his sisters to transfer the lands to him when he had never bothered to tell them that they had an obligation to transfer.

83 Richard's evidence that he arranged for Beck Developments to transfer title to Lot 20 and the 53 Acre Parcel "in case he got into trouble" with creditors or because of high interest rates makes little sense because:

* Beck Developments was the registered owner of a large number of unsold Residential Lots other than Lot 20 and the 53 Acre Parcel and he did not feel the need to take steps to protect the other lots from creditors;
* Richard did not take any steps to protect his own home quarter from potential creditors despite the fact that he owned the quarter section as clear title;
* Richard did not have any creditors or debt at the time of the 1982 Transfer;
* the mortgage on the subdivision lands had been discharged prior to the 1982 Transfer and there is no explanation as to why high interest rates would have been of concern in relation to Lot 20 and the 53 Acre Parcel;
* Richard testified that he was dealing in other homes at the time but that they were all clear title; there was no evidence as to why high interest rates were of concern to him.

84 I conclude that Richard is not a credible or reliable witness and I must approach his evidence with substantial

caution.

B Credibility of Judy

85 Even if Richard's evidence was credible and reliable, it would still be necessary to look for some corroboration from other sources. Judy gave the only evidence which could potentially corroborate Richard's evidence regarding the creation of a trust arising from the 1982 Transfer. She is not an independent witness but nevertheless her evidence, if believed, could potentially fortify Richard's evidence or permit a conclusion that Richard's evidence is more likely to be accurate.

86 Judy was not directly involved in either the 1979 Transfer or the 1982 Transfer. She recalled that the purchase price for the 1979 Transfer was $100,000. She understood the reason for the 1982 Transfer was "for her to keep it for us for safekeeping" so that "if something happened we would not lose the whole quarter". She apparently obtained this information from discussions with Richard and Elsie, but she did not explain when or where or under what circumstances these discussions took place.

87 Judy did not have any concerns about creditors and testified that they were never behind in payments to creditors. She was never concerned that their own farm property might be at risk due to Richard's business activities.

88 Judy testified that the accounting records for the SW Quarter were thrown out approximately 10 to 15 years ago because "everything was done" and they did not need the records anymore. Her evidence that "everything was done" is inconsistent with the ongoing interest in the land which would arise if there was a trust in place.

89 Judy's evidence is directly inconsistent with Richard's in one material respect. Judy did not testify, as Richard did, that one of the reasons for the 1982 Transfer was to ensure that Elsie would have a good home to live in and that it was "the right thing to do".

90 I conclude that Judy was a candid witness who attempted to provide the Court with an accurate description of the circumstances. However, her evidence does contain inconsistencies and, in addition, suffers from some frailties because it is based on memory which was more than 34 years old. Furthermore, her understanding of the reasons for the 1982 Transfer was informed by her discussions with Richard. Not unexpectedly, she was not able to provide detail and thus there was vagueness in her evidence. Her evidence must also be viewed with caution.

C Post 1982 Events -- Circumstantial Evidence of Intention

91 Events which took place subsequent to the date of the creation of the alleged trust can provide circumstantial evidence of the intention of the parties at the time of the 1982 Transfer.

92 From 1982 until approximately one year ago Richard farmed the 53 Acre Parcel or, alternatively, rented the land to other farmers. He kept all the income generated from the 53 Acre Parcel from 1982 until approximately one year ago. Similarly, from 1982 until 2011 Richard paid the taxes on the 53 Acre Parcel. His actions in dealing with the 53 Acre Parcel are potentially consistent with an intention that the lands had been conveyed in 1982 on trust.

93 Conversely, a number of Richard's actions post 1982 support an inference that no trust was intended at the time of the 1982 Transfer. For example:

* acquiescing in Shelly's occupation and use of Lot 20 for more than two decades and standing by silently while she made significant improvements to the property without disclosing his belief that Lot 20 would revert to him is inconsistent with Richard's claim that he was the beneficial owner;
* failing to advise Audrey and Marolyn that Lot 20 and the 53 Acre parcel would be transferred to him at some point in the future is inconsistent with Richard's claim to beneficial ownership;

* failing to pay the taxes after Elsie's death in 2012 is inconsistent with Richard's position that he was, in fact, the beneficial owner.

* failing to take any steps for more than 2 1/2 years after Elsie's death to arrange for a transfer of Lot 20 and the 53 Acre Parcel to his name is also inconsistent with Richard's claim to beneficial ownership.

94 Elsie continued to live in the home on Lot 20 until 1991. Elsie did not pay rent in relation to her occupation of Lot 20, but she did pay the property taxes. Her actions were consistent with those of an owner.

95 The evidence regarding how the present dispute arose also sheds some light on Richard's intention at the time of the 1982 Transfer. Richard and Marolyn testified regarding a meeting between them which took place on or about September 20, 2014. Their evidence about this meeting conflicts in several material ways. Richard testified that Marolyn flagged him down and asked for a ride on his new quad. He drove Marolyn to the shop on his home quarter where they had a discussion. According to Richard, Marolyn explained the need to probate Elsie's Will and that she needed an acknowledgement signed by Beck Developments and Richard confirming that all terms of the agreement dated June 27, 1979 had been met and that the agreement was concluded. Richard testified that he responded by telling Marolyn that the $100,000 had been paid. He testified that Marolyn became upset and flailed her arms saying "I don't care, just sign it, just sign it". A few days later Richard received in the mail the form of acknowledgment which Marolyn had referred to along with a copy of Elsie's Will. Richard did not sign the acknowledgement. Instead, he sought legal advice and filed a caveat against Lot 20 and the 53 Acre Parcel on December 11, 2014.

96 Marolyn's evidence with respect to this meeting was significantly different. She testified that she was at a party on September 20, 2014 which Shelly was hosting at her home on Lot 20. Marolyn said that Richard took her for a ride on his machine and he stopped at the shop on his home quarter. They had a normal friendly discussion during which she told Richard that she and Audrey were considering probating Elsie's Will. Marolyn testified that she asked Richard whether everything was "done between you and mom and between R. Beck Developments and mom". Marolyn testified that Richard responded by saying that "yes, everything is concluded". Marolyn then explained that Elsie's Will refers to some kind of an agreement with Beck Developments. She asked him whether he knew anything about the agreement. Richard responded by saying that he had no idea what the reference in the Will was all about. He repeated this several times. She then said that she would send him a copy of the Will.

97 For the reasons given earlier, I have serious concerns regarding Richard's credibility. I have no similar concerns with Marolyn's evidence. I am satisfied that the evidence regarding this meeting is as recounted by Marolyn. Her evidence is logical and makes sense. She was clearly interested in determining whether there were outstanding issues which might complicate the probate of Elsie's Will. She knew that the Will imposed a duty on the trustees to carry out the terms of the agreement dated June 27, 1979 which Elsie had entered into with R. Beck Developments. Therefore, it is logical that she would want to know if there were any outstanding issues between the estate and Beck Developments. For these reasons, I prefer the evidence of Marolyn to the evidence of Richard in relation to the September 2014 discussions. As a result, I conclude that Richard acknowledged to Marolyn in September 2014 that "everything was concluded" between himself, Beck Developments and Elsie.

98 But the September 2014 meeting is more significant for what was not said than what was said between the parties. Richard was aware at the time of the meeting with Marolyn in September 2014 that Elsie's Will was to be probated. I infer that he was aware that Lot 20 and the 53 Acre Parcel were by far the largest assets in the estate. Yet he failed to immediately tell Marolyn that he had an interest in the lands. He never did tell the executors that he was the beneficial owner of the land, nor did he demand a transfer of the lands until the caveat was filed three months later. I find this to be inconsistent with Richard's evidence that he believed a trust had been created in 1982.

99 Having reviewed all of the evidence, I conclude that the 1982 Transfer did not create a trust. The 1982 Transfer was prepared by the lawyer Donald Ostry on behalf of Beck Developments. The consideration for the transfer refers to "trust arrangements" but on a plain reading of the 1982 Transfer, these words do not describe a trust arising at

that time but instead refer to an agreement pursuant to which Elsie transferred property to Beck Developments to facilitate subdivision. Given all of the evidence, I conclude that this can only refer to the 1979 Transfer. Therefore, the 1982 Transfer does not provide any insight as to whether Beck Developments intended to convey Lot 20 and the 53 Acre Parcel to Elsie on trust.

100 Given all of the above, there is one material fact which supports an inference that there was an intention to create a trust in 1982, but there are many more facts which support the opposite inference. When I consider all of the evidence relating to the 1982 Transfer, I conclude that Richard and Beck Developments have failed to establish on a balance of probabilities an intention to create a trust when Lot 20 and the 53 Acre Parcel were conveyed to Elsie.

101 Given my conclusion, based on all of the evidence before the Court, that the Plaintiffs have not proven the creation of an express or implied trust it is not necessary for me to consider the effect of the *Statute of Frauds* in this case.

2 Are the lands subject to a resulting trust?

102 The Plaintiffs argue in the alternative that a resulting trust arose at the time of the 1982 Transfer of Lot 20 and the 53 Acre Parcel to Elsie. They argue that the 1982 Transfer was gratuitous. Furthermore, they argue that there is no evidence to show that the transfer was intended to be a gift, and therefore Elsie should be deemed to hold Lot 20 and the 53 Acre Parcel in trust for them.

103 For a presumption of resulting trust to arise, Richard and Beck Developments must prove on a balance of probabilities that there was no consideration for the 1982 Transfer. The Defendants do not have a burden to prove that there was consideration for the 1982 Transfer.

104 If Richard and Beck Developments establish on a balance of probabilities that the 1982 transfer was gratuitous, then the onus is on the Defendants to rebut the presumption by proving on a balance of probabilities that the transfer, though gratuitous, was intended to be a gift.

105 A transfer is gratuitous when it is made without consideration. In the present case, the 1982 Transfer and the affidavit of transferee sworn by Richard identify the consideration as follows:

> "...ONE DOLLAR ($1.00) and pursuant to trust arrangements made between the parties, the property was transferred from Elsie Doroth (sic) Beck to R. Beck Developments Ltd. to facilitate subdivision ..."
>
> (emphasis added)

106 Elsie was the transferee of Lot 20 and the 53 Acre Parcel, but the affidavit of transferee was sworn by Richard who was the controlling shareholder of Beck Developments, the transferor. No explanation was provided as to why or under what circumstances Richard, the operating mind and will of the transferor, was swearing the affidavit of transferee.

107 Richard testified that the 1982 Transfer was prepared by his lawyer, Donald Ostry, and it was Mr. Ostry who "came up with this wording" which described the consideration. There is no evidence that Elsie ever saw the 1982 Transfer or the affidavit of transferee or the description of the consideration contained in those documents. She did sign the discharge of caveat in relation to Lot 20 and the 53 Acre Parcel, but this was many months after the 1982 Transfer.

108 I find that the description of the consideration for the 1982 Transfer are not the words of Elsie but are the words of Richard who swore the affidavit of transferee and also the words of Richard's lawyer, Mr. Ostry.

109 Richard testified that the sale of the SW Quarter which resulted in the 1979 Transfer was completed by the

payment of the $100,000 purchase price well before the 1982 Transfer. He argues that the transaction was complete and there were no "trust arrangements" remaining from 1979 and there was nothing left to be done in relation to the 1979 transaction. For the reasons I have earlier given, I do not accept his evidence on this point. Instead, I conclude that the $100,000 purchase price had not been paid in full before the 1982 Transfer. Furthermore, I simply do not accept Richard's evidence that there was nothing left to be done in relation to the 1979 Transfer at the time of the 1982 Transfer.

110 The reasons given by Richard for the 1982 Transfer: to avoid creditors, and to enable Elsie to live in a good home - are not logical. There is no credible evidence which would support any real concern about creditors. Furthermore, Richard had no explanation as to why it was necessary for Elsie to have title to Lot 20 and the 53 Acre Parcel for her to continue to live in her home.

111 The Defendants submit that the consideration for the 1982 Transfer was a forgiveness of all or a portion of the $100,000 purchase price from 1979. There is no direct evidence to support this conclusion and there is insufficient evidence to permit me to draw any inference in that regard.

112 On its face, the 1982 Transfer suggests that the consideration for the transfer relates to "trust arrangements" made between Elsie and Beck Developments to facilitate subdivision. This can only refer to the 1979 Transfer or to an agreement in relation to the sale of the SW Quarter to Beck Developments. This was the transfer which "facilitated" the subdivision of the SW Quarter.

113 After considering all of the evidence, I conclude that the language used in the 1982 Transfer must be logically interpreted as meaning that some aspect of the "trust arrangements" in relation to the 1979 Transfer constituted part of the consideration for the 1982 Transfer, or that the 1982 Transfer constituted at least partial fulfillment of "trust arrangements" which facilitated subdivision. While I find that at the time of the 1982 Transfer there were "trust arrangements" outstanding from the 1979 Transfer, the evidence does not permit me to make a finding as to precisely what those "trust arrangements" were.

114 Given all of the evidence, I conclude that the express words of the 1982 Transfer demonstrate that the transfer was for consideration. As a result, I find that Richard and Beck Developments have not proven on a balance of probabilities that the 1982 Transfer was gratuitous. Therefore, I conclude that no presumption of resulting trust arose from that transaction.

VII CONCLUSION

115 Richard and Beck Developments have failed to prove that an express or implied trust arose in relation to the 1982 Transfer of Lot 20 and the 53 Acre Parcel to Elsie. They have also failed to prove on a balance of probabilities that a presumption of resulting trust arose from the 1982 Transfer.

116 Therefore, in response to the issues which Macklin J. directed be tried I conclude:

1) neither Richard Beck nor R. Beck Developments Ltd. has any interest in the Estate Lands; and
2) the Estate of Elsie Beck is not under a trust obligation to transfer the Estate Lands to Richard Beck or R. Beck Developments Ltd.

VIII COSTS

117 If the parties cannot agree on costs, they may speak to costs within 60 days of the date of these Reasons.

Dated at the City of Edmonton, Alberta this 26th day of September, 2017

J.T. HENDERSON J.

End of Document

In the Court of Appeal of Alberta

Citation: Bruderheim Community Church v Moravian Church In America (Canadian District), 2020 ABCA 393

Date: 20201106
Docket: 1803-0041-AC
Registry: Edmonton

Between:

Bruderheim Community Church and Bruderheim Moravian Church

Appellants

- and -

Board of Elders of the Canadian District of the Moravian Church In America

Respondent

The Court:

The Honourable Madam Justice Barbara Lea Veldhuis
The Honourable Madam Justice Michelle Crighton
The Honourable Mr. Justice Kevin Feehan

Memorandum of Judgment

Appeal from the Decision by
The Honourable Mr. Justice J.T. Henderson
Dated the 9th day of February, 2018
Filed on the 9th day of February, 2018

(2018 ABQB 90, Docket: 1703 10116)

Memorandum of Judgment

The Court:

[1] The appellants appeal the chambers judge's refusal to grant a permanent injunction and other ancillary relief, the intended effects of which were to prevent the respondent from interfering with the appellants' continued use of church lands and buildings located in the Town of Bruderheim, Alberta***: Bruderheim Community Church v Board of Elders***, 2018 ABQB 90, 66 Alta LR (6th) 168.

[2] The original grant of the church lands in 1897 was, pursuant to a "Habendum Clause", made subject to a trust "for the purposes of the Congregation of the Moravian Church at Bruderheim." Despite irregularities in the registration of the Habendum Clause against subsequent certificates of title in the Land Titles Office, the chambers judge concluded that the terms of the trust had not changed. The parties do not dispute the continuation of the trust. The current certificate of title vests the fee simple of the church lands in the "Board of Elders of the Canadian District of the Moravian Church in America" ("Board of Elders") in trust, however, for "the Congregation of the Moravian Church." The central issue in this appeal, therefore, is whether the appellants are the intended beneficiaries under that trust.

[3] Some background is required in order to situate the chambers judge's decision.

[4] The *Unitas Fratrum*, or "Unity of the Brethren", is a protestant Christian denomination with a heritage dating back to 1457. Colloquially, the *Unitas Fratrum* is known as the 'Moravian Church'.

[5] The *Unitas Fratrum* is broken into twenty-four provinces. One of those provinces is the "Moravian Church, Northern Province" (the "Northern Province"). The "Book of Order" is the constitutional document for the Northern Province. Where the Bible serves the spiritual aspects of the Northern Province, the Book of Order serves the administrative aspects. The Book of Order also vests oversight of the Northern Province within a Provincial Elders Conference (the "Provincial Conference"). The respondent, Board of Elders, was incorporated to assist the Provincial Conference to administer the Northern Province's Canadian property.

[6] The Book of Order governs the contractual relationship between the parties to this dispute.

[7] The Book of Order establishes the procedure and requirements for the recognition of new congregations. The Bruderheim Moravian Church was formally "undertaken" by the Provincial Conference as a congregation of the Northern Province in December 1895 and an Article of Agreement was finalized in June 1896. In April 1897, the federal government, pursuant to the *Dominion Lands Act*, SC 1879. c.31 issued a grant to three members of the Bruderheim Moravian Church 'in trust for the purposes of the Congregation of the Moravian Church at Bruderheim." In

October 1912, the land was transferred to the Board of Elders in fee simple and that was amended in March, 1922 to include the original trust provision.

[8] The Bruderheim Moravian Church is an unincorporated association, although it has been registered with the Canada Revenue Agency as a registered charity since January 1, 1967. The other appellant, Bruderheim Community Church, was incorporated in April 2017 under the *Religious Societies Land Act*, RSA 2000, c R-15. The Bruderheim Community Church represents some, but not all, of the members of the Bruderheim Moravian Church.

[9] The Book of Order also sets out the procedure and consequences for dissolution of any congregation previously recognized. Article 1041 of the Book of Order mandates that all rules and regulations in congregational bylaws include provisions that expressly vest congregational property to the Northern Province should the congregation be dissolved. Article 1046 of the Book of Order states:

> 1046. Whenever any Moravian congregation expressly or virtually severs its connection with the Moravian Church -Northern Province, or shall become defunct or be dissolved, the rights, privileges, and title to the property thereof, both real and personal, shall vest in the Moravian Church-Northern Province, and be administered according to the rules and regulations of said Church.

[10] As noted by the chambers judge, tensions developed between the Bruderheim Moravian Church and the Provincial Conference and the Northern Province. In May 2016, the Bruderheim Moravian Church resolved "to disassociate ... from the Moravian Church, Northern Province and become ... an independent congregation." That decision to disassociate was supported by 49 members of the Bruderheim Moravian Church congregation. Only three members voted against the resolution.

[11] In response, the Northern Province called for a further special meeting of the Bruderheim Moravian Church to be held on June 6, 2016. At that meeting, it was explained to the congregation that under the Book of Order, property owned by the Bruderheim Moravian Church would vest in the Northern Province on dissolution. As a result, the congregation of the Bruderheim Moravian Church voted against the resolution (53-1) but, in January 2017, adopted revised bylaws which purported to assert that it is “an independent and self-governing evangelical congregation.” Those bylaws make no reference to the Moravian Church, the Northern Province or its governance structure, or the Moravian faith. Forty-five members of the Bruderheim Moravian Church voted to accept the proposed bylaws. Four members abstained. None opposed the resolution.

[12] The Board of Elders concluded, therefore, that the Bruderheim congregation "had no intention of remaining within the ... [Moravian Church-Northern Province] or associating with the denomination in any capacity." The Board of Elders recommended to the Provincial Conference that it dissolve the Bruderheim Moravian Church which it did effective March 16, 2017. On March 22, 2017, the Northern Province advised representatives of the Bruderheim Moravian Church that all real and personal property associated with the Bruderheim church reverted to the Northern Province. The Provincial Conference also demanded that the church property be vacated by May 31, 2017.

[13] The appellants obtained an interim injunction enjoining the respondent from interfering with their use and enjoyment of the church lands and subsequently sought a permanent injunction to the same effect.

[14] In dismissing the appellants' application for a permanent injunction, the chambers judge found, after careful analysis of the materials before him, that the Board of Elders held title to the church lands and buildings as successors to the original trustees from 1897. He found that since 1912 the Board of Elders were trustees on behalf of beneficiaries that were adherents to the worldwide Moravian Church organization with a congregation in Bruderheim and not simply to the Bruderheim Moravian Church. Thus, to be beneficiaries of the trust, he concluded that the local Bruderheim congregation must also be members of the Moravian Church.

[15] The chambers judge concluded that having dissociated themselves from the Northern Province, the Bruderheim Moravian Church congregation ceased to be beneficiaries of the trust. As a result, he concluded that the people on whose behalf the Bruderheim Moravian Church and the Bruderheim Community Church sought the injunction had lost any right to use the church building and property as beneficiaries of that trust. Not having established a right to the church lands, the chambers judge refused the appellants' application for a permanent injunction.

[16] The appellants challenge the chambers judge's interpretation of the objects of the 1897 trust. Creation of an express trust requires the presence of three certainties, namely intention, subject matter, and object: ***Century Services Inc v Canada (Attorney General***), 2010 SCC 60 at para 83, [2010] 3 SCR 379. Certainty of objects requires that the persons or the class of persons who are the intended beneficiaries must be sufficiently certain so that the trust can be performed.

[17] The appellants' primary argument on appeal is the chambers judge misconstrued the objects of the trust by concluding that only adherents to the worldwide Moravian Church with a congregation in Bruderheim are beneficiaries under the trust and not the local congregation of the Bruderheim Moravian Church. The appellants also argue procedural unfairness in the chambers

judge's determination that Bruderheim Moravian Church – as an unincorporated association - lacked standing to seek a permanent injunction.

[18] In support of their appeal, the appellants also bring an application under Rule 14.45 of the *Alberta Rules of Court*, Alta Reg 124/2010 seeking an order to admit new evidence on appeal. In that regard, the appellants have offered a body of what is said to be new evidence attached to Wayne Larson's affidavit filed April 25, 2018, concerning which people constitute the congregation of the Bruderheim Moravian Church and their association with use of the church premises over time. Some of the proffered evidence relates to what are said to be links to people of Moravian heritage. The appellants also argue that the new evidence is necessary to respond to the doubts concerning standing insofar as not all of the members of the Bruderheim Moravian Church voted in May 2016 to disassociate from the Northern Province and therefore some of their members may still be beneficiaries under the trust regardless of how those beneficiaries are defined.

[19] In our view the proposed fresh evidence is not admissible under the well-known test in ***Palmer v The Queen***, [1980] 1 SCR 759, but even if it were, it does not assist to resolve the issues on appeal.

[20] The entirety of the new evidence was available to the appellants at the time they brought their application for a permanent injunction. The right of those represented by the Bruderheim Moravian Church and the Bruderheim Community Church to occupy and use the Bruderheim church property has always been in issue. It was specifically in issue before the chambers judge. The proposed new evidence is said to support the legitimacy of the right thus claimed, it being an overview of church usage, of memberships and so forth. The proposed fresh evidence could have been obtained in advance of the hearing through exercise of due diligence.

[21] More significantly, the evidence does not advance the interests on appeal. The chambers judge neither terminated nor varied the terms of the trust. He also understood that not all of the members of the Bruderheim Moravian Church voted to disassociate themselves from the Moravian Church. While he acknowledged, at paras 117-119, that the Board of Elders may at some time need to bring an application to vary or terminate the trust, or for advice and directions in relation to the approach to take in dealing with the church lands, he also emphasized that the trust remained valid and the Board of Elders must continue to hold the church lands in trust for the beneficiaries as he defined them.

[22] It must be borne in mind that these appellants are not, by this appeal, advancing some form of adverse possession claim in the sense that the people represented by the Bruderheim Moravian

Church and the Bruderheim Community Church have used the church property for a long time and want to continue to do so. The chambers judge was alive to the historical usage of the church lands and by whom. This case is about whether the Bruderheim Moravian Church and the Bruderheim Community Church have established a basis for a permanent injunction. The proposed fresh evidence does not assist in resolving that issue. Nothing in the new evidence could reasonably be expected to impact the interpretation of the objects of the trust.

[23] For all of the above reasons, the application to admit the new evidence is denied.

[24] As to the merits of the appeal, we discern no basis for appellate intervention. The chambers judge correctly noted that the test for an interlocutory injunction and a permanent injunction differ in some important respects***: Irving Oil Ltd v Ashar***, 2016 ABCA 15 at para 17-18, 609 AR 388; ***1711811 Ontario Ltd v Buckley Insurance Brokers Ltd***, 2014 ONCA 125 at paras 77-79, 371 DLR (4th) 643. Before a permanent injunction can be granted, whether summarily or after trial, a plaintiff must fully prove its rights. Simply demonstrating a "serious issue to be tried" is not sufficient. Once it has conclusively established its rights, the plaintiff must also demonstrate that it is entitled to the equitable remedy of a permanent injunction: ***Liu v Hamptons Golf Course Ltd***, 2017 ABCA 303 at para 17, [2017] AJ No 972 (QL).

[25] Title to the church lands is held by the Board of Elders. The appellants seek an injunction that would allow the Bruderheim Community Church to occupy and use the church building for their own services by, in effect, altering the title holding and suspending the trust indefinitely.

[26] We agree with the analysis and disposition of the case by the chambers judge for the reasons he gave. There is no palpable and overriding error in his finding as to the character and elements of the trust, as to the legitimacy of the title holding, and as to the voluntary dissociation by those people represented by the Bruderheim Moravian Church and the Bruderheim Community Church from the class of persons who would qualify as beneficiaries of the trust (ie the Moravian Church). In those circumstances, and setting aside the question of standing, there is no basis for an injunction that displace the Board of Elders as the title holder or that would force the Board of Elders to surrender control of the church property to either the Bruderheim Moravian Church or to the Bruderheim Community Church.

[27] As to standing, we also conclude that there was no unfairness occasioned by the chambers judge's conclusion that, while the Bruderheim Community Church had standing, the Bruderheim Moravian Church did not. The parties must have known that standing was or would be a live issue in light of Wakeling JA's dissenting reasons in the appeal from the interim injunction: ***Bruderheim Community Church v Board of Elders of the Canadian District of the Moravian Church in***

America, 2017 ABCA 343 at paras 105-106, [2017] AJ No 1451 (QL). Regardless, while the chambers judge concluded the Bruderheim Moravian Church was not a proper party to the litigation, he nevertheless well and thoroughly considered the substantive issues as if the appellants each had standing.

[28] In conclusion, we endorse the reasons given by the chambers judge for dismissing the appellants' application for a permanent injunction. This court appreciates, as did the chambers judge, that dismissing the permanent injunction raises additional questions relative to the trust and its beneficiaries, but the answers to those questions are for another day.

[29] The appeal is dismissed.

Appeal heard on November 3, 2020

Memorandum filed at Edmonton, Alberta
this 6th day of November, 2020

Authorized to sign for: Veldhuis J.A.

Crighton J.A.

Feehan J.A.

Appearances:

R.O. Langley
for the Appellants

J.B. Laycraft, Q.C./R.E. Harrison
for the Respondent