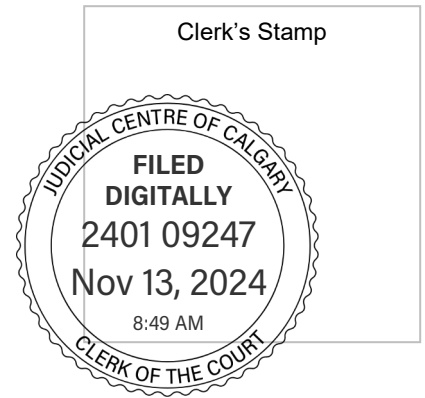


COURT FILE NUMBER 2401-09247
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PROCEEDINGS IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c C-36, as amended



AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF LONG RUN EXPLORATION LTD. AND CALGARY SINOENERGY INVESTMENT CORP.

DOCUMENT

BRIEF OF LAW

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BRIEF OF LAW OF ABE NEUFELD as REPRESENTATIVE PLAINTIFF

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I. INTRODUCTION

1. These are the written submissions in support of Abe Neufeld's ("**Neufeld**") opposition to the application brought by FTI Consulting Canada Inc. (the "**Monitor**") of the Transaction Approval and Reverse Vesting Order ("**RVO**") approving an Amended and Restated Stalking Horse Subscription Agreement (the "**A&R Subscription Agreement**") (together with the RVO, the "**Transaction**") between Long Run Exploration Ltd ("**Long Run**"), Sinoenergy Investment Corp ("**Calgary Sinoenergy**") and 2657493 Alberta Ltd. (the "**Purchaser**"). Neufeld makes these submissions as the Representative Plaintiff of a class action brought against Long Run. This class action seeks recovery of outstanding surface lease rentals and interest Long Run knowingly withheld from Albertan landowners since 2020 (the "**Neufeld Claim**").¹ The Neufeld Claim has not yet received class action certification.
2. KMSC Law LLP ("**KMSC**") also represents 54 different landowners with a total of 140 Long Run surface locations on their property in surface rights matters. To the extent KMSC has received instructions prior to this application, KMSC's clients, separate from Neufeld and the Neufeld Claim, request the relief sought by Neufeld and adopt these written submissions.
3. Neufeld opposes the relief sought due to the prejudice Albertan landowners would experience should the Transaction proceed without amendments. In particular, Neufeld objects to the Transaction for the following reasons:
 - a. The A&R Subscription Agreement classifies the Neufeld Claim as a "Transferred Liability", which would cause Albertan landowners who are owed outstanding surface lease rentals and associated interest to lose their right to pursue a remedy for the same through a single class action proceeding;
 - b. The Purchaser has not committed to paying all outstanding surface lease rentals and interest to landowners as a condition of closing the Transaction, yet has apparently earmarked up to half of the outstanding surface lease rentals to be paid within 10 days of closing the Transaction in exchange for landowners releasing rights to recover the remaining 50% owing and interest;
 - c. The Rental Arrears Letter (as defined below) sent by Long Run, while under Monitor oversight, violates the remedial objectives of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**") and should be deemed of no force and effect.

¹ Donaldson Affidavit at para 3.

4. Neufeld proposes surgical amendments to the RVO and A&R Subscription Agreement to ensure landowners owed outstanding surface lease rentals and interest as a class of creditors will be no worse off in the Transaction than the viable alternative of
 - a. proceeding with the Transaction in its current form; or
 - b. immediate liquidation of Long Run's assets in a bankruptcy scenario.
5. More particularly, Neufeld seeks:
 - a. An amendment to the A&R Subscription Agreement classifying the Neufeld Claim as a "Retained Liability";
 - b. Amending section 2.2 of the A&R Subscription Agreement to provide that the Purchaser shall furnish an additional cash payment of \$7,500,000 to be held in trust by the Monitor to satisfy the Neufeld Claim and Outstanding Surface Lease Rentals and interest; and
 - c. An order deeming the Rental Arrears Letter (as defined below) to be of no force or effect.

(the "**Proposed Amendments**")

6. As more particularly described below, the Rental Arrears Letter believed to be sent to all unpaid landowners contemplates paying 50% of the outstanding rental arrears within 10 days of closing the Transaction in exchange for a landowner releasing their rights to pursue the remaining 50% and interest.² Given the Monitor's 5th Report estimates Outstanding Surface Lease Rentals at approximately \$6.5 million,³ the Proposed Amendments merely formalize liabilities the Purchaser already acknowledges and requires that the Purchaser pay all of said acknowledged liabilities, instead of the half proposed by the Rental Arrears Letter.

II. RELEVANT FACTS

7. Neufeld relies upon the facts set out in the Affidavit of Shannon Donaldson, affirmed November 12, 2024 (the "**Donaldson Affidavit**"), in addition to the facts set out in the Monitor's Reports filed in the within CCAA Proceedings.

The Neufeld Claim

² Donaldson Affidavit at para 5.

³ 5th Report of the Monitor, dated October 30, 2024 (the "**Fifth Report**") at para 69.

8. On June 6, 2022, KMSC filed a Statement of Claim proposing a class action lawsuit against Long Run on behalf of Neufeld as Representative Plaintiff. On August 10, 2022, KMSC filed an amended Statement of Claim against Long Run (the “**Neufeld Claim**”). The Neufeld Claim alleges, *inter alia*:
 - a. A systematic and coordinated breach of Surface Lease Agreements on the part of Long Run by failing to pay Surface Lease Rent to landowners when it came due starting on or about 2020;
 - b. Long Run, by failing to pay Surface Lease Rent when due, unjustly enriched itself by the use of those funds contractually owed to the Representative Plaintiff and Class Members, or, in the alternative, by avoiding the necessity of borrowing money to pay the Surface Lease Rent contractually owing to Landowners; and
 - c. The Representative Plaintiff and Class Members suffered a loss of Surface Lease Rent due and payable under Surface Lease Agreements and/or the interest they would have earned by the prudent and reasonable investment of such compensation.
9. The Neufeld Claim was served on Long Run on September 1, 2022.⁴
10. Neufeld did not require that Long Run file a defence, as settlement discussions with Long Run were ongoing prior to the commencement of the CCAA proceedings.
11. An application to certify Neufeld Claim as a class action has not been filed. As per section 2(3) of the *Class Proceedings Act*, SA 2003, c C-16.5, an application to certify a class action can only be brought after the defendant has filed a Statement of Defence.⁵

The Rental Arrears Letter

12. Long Run’s P&NG Assets consist of approximately 4,856 licensed wells and 523 licensed facilities in Alberta.⁶ The Transaction contemplates that all Surface Lease Agreements will be Retained Contracts.⁷ The P&NG Assets are located on both Crown and private land.
13. With respect to PN&G Assets on private land, the Monitor’s 5th Report estimates that approximately \$6.5 million in outstanding surface lease rentals owing to various

⁴ Donaldson Affidavit at Exhibit “C”.

⁵ *Class Proceedings Act*, SA 2003, c C-16.5 (the “**Class Proceedings Act**”) at section 2(3).

⁶ Monitor’s Bench Brief, filed October 31, 2024 (the “**Monitor’s Brief**”) at para 41(c).

⁷ Amended and Restated Subscription Agreement [the “**A&R Subscription Agreement**”], Appendix “B” to the 5th Report, at page B-10.

landowners has not been paid by Long Run (“the “**Outstanding Surface Lease Rentals**”).⁸

14. The A&R Subscription Agreement contemplates that the Outstanding Surface Lease Rentals will be Retained Liabilities.⁹
15. The Transaction does not contemplate paying Outstanding Surface Lease Rentals owing to Albertan landowners as a condition of closing.
16. KMSC became aware on or about October 31, 2024, that many current and prospective clients received a letter from Long Run, presumably with the approval of the Monitor, offering to settle Outstanding Surface Lease Rentals by paying 50% of the acknowledged amount owing within 10 days of closing the Transaction in exchange for a release in full and final satisfaction of the remaining arrears (the “**Rental Arrears Letter**”).¹⁰
17. The Rental Arrears Letter did not recommend landowners seek independent legal advice before settling for a compromised portion of their claims, nor did it disclose the ongoing Neufeld Claim, landowners’ rights as prospective class members, or a landowner’s right to seek full recovery of rent arrears under section 36 of the *Surface Rights Act*, RSA 2000, c S-24 (the “**SRA**”).¹¹

III. ISSUES

18. We respectfully submit the Court has two issues to determine regarding the impact of this Transaction on landowners owed Outstanding Surface Lease Rentals:
 - a. Is it appropriate to approve the Transaction without the Proposed Amendments, given that Albertan landowners as potential class members of the Neufeld Claim will be materially worse off than they would be if the Transaction were approved with the Proposed Amendments; and
 - b. Should the Court exercise its authority set out in section 11 of the CCAA to deem the Rental Arrears Letter of no force and effect?

IV. THE LAW AND ARGUMENT

a) The Neufeld Claim should be deemed a Retained Liability

19. The Neufeld Claim should be deemed a Retained Liability for the following reasons:

⁸The 5th Report at para 69.

⁹ A&R Subscription Agreement, Appendix “B” to the 5th Report, at page B-9; The 5th Report at para 70.

¹⁰ Donaldson Affidavit at Exhibit “D”.

¹¹ *Surface Rights Act*, RSA 2000, c S-24 (CanLII) (the “**SRA**”) at section 36.

- i. Deeming the Neufeld Claim a Transferred Liability is logically inconsistent with deeming Outstanding Surface Lease Rentals a Retained Liability;
- ii. Deeming the Neufeld Claim a Retained Liability is more favourable for landowners than the proposed Transaction;
- iii. If the Transaction does not close, landowners will not be materially worse off than if the Transaction proceeds in its current form; and
- iv. Deeming the Neufeld Claim a Retained Liability discourages unilateral non-payment of Surface Lease Rentals by operators.

i. Deeming the Neufeld Claim a Transferred Liability is Logically Inconsistent with Deeming Outstanding Surface Lease Rentals a Retained Liability

20. While the Neufeld Claim has not yet been certified as a class action, counsel to a representative plaintiff in a proposed class action has a duty to all potential class members to be committed to their claims.¹² When this principle is paired with the fact that KMSC represents 54 clients in surface rights matters on 140 Long Run Surface Leases, our office is well suited to advocate on behalf of all Albertan landowners as a creditor class in this Application.
21. The A&R Subscription Agreement deems the Neufeld Claim as a “Transferred Liability” to be transferred to the Creditor Trust. H Corp’s Brief provides an overview of the problems with asserting a claim against the Creditor Trust should the Transaction proceed in its current form.¹³ Neufeld adopts H Corp’s concerns with recovery potential against the Creditor Trust.
22. The A&R Subscription Agreement contemplates that the Purchaser will assume Outstanding Surface Lease Rentals owing to various landowners as part of the purchase price. These amounts are included in the definition of “Retained Liabilities” in the A&R Subscription Agreement.¹⁴
23. The essential nature of the Neufeld Claim relates to Outstanding Surface Lease Rentals, which the Monitor has acknowledged is a Retained Liability. The Monitor’s materials do not provide any explanation or justification for why the Neufeld Claim, which is based on the same underlying liability as the Outstanding Surface Lease Rentals, should be treated differently from the Outstanding Surface Lease Rentals and transferred to the Creditor Trust.
24. The Monitor’s positions regarding the Neufeld Claim and the Outstanding Surface Lease Rentals create a logical inconsistency in the A&R Subscription Agreement: on one hand, Outstanding Surface Lease Rentals are Retained Liabilities; on the other hand, all liabilities

¹² *Smith v Lafarge Canada Inc*, 2022 ABQB 289 (CanLII) at para 21.

¹³ Brief of Law of Henenghaixin Corp. at para 23.

¹⁴ A&R Subscription Agreement, Appendix “B” to the 5th Report, at page B-9; The 5th Report at para 70.

of Long Run involving the Neufeld Claim, which relates to Outstanding Surface Lease Rentals, are not retained, but are instead transferred to the Creditor Trust.¹⁵

25. Deeming the Neufeld Claim as a Retained Liability would be congruous with Long Run's acknowledgement that Outstanding Surface Lease Rentals are Retained Liabilities.

ii. Deeming the Neufeld Claim a Retained Liability is More Favourable for Landowners than the Proposed Transaction

26. As detailed in the Monitor's Brief, in determining whether an RVO is appropriate, the Court must consider the factors outlined in *Harte Gold Corp (Re) [Harte Gold]*.¹⁶ The *Harte Golde* considerations include, *inter alia*, the following questions:

a. Does the RVO structure produce an economic result that is at least as favourable as any other viable alternative?; and

b. Is any stakeholder worse off under the RVO structure than they would have been under another viable alternative?¹⁷

27. The current RVO would produce an economic result for landowners that is worse than the result they would obtain with the Proposed Amendments and would therefore materially prejudice them as a class of creditors. This prejudice would take two distinct forms. First, the current RVO would eliminate landowners' right to relief through an efficient, single proceeding. Second, the current RVO will place the onus on landowners to individually pursue the Purchaser for Outstanding Surface Lease Rentals, which pursuit can be time intensive and laborious when compared to the potential individual payoff.

28. By losing out on their right to recovery through a single class action proceeding, landowners as a class of stakeholders will be materially worse off than the viable alternative of the Proposed Amendments. Such a result would run contrary to the factors outlined in *Harte Gold*.¹⁸ Given the scale of unpaid rent (approximately \$6.5 million), the alternative to the Neufeld Claim will be potentially over one thousand section 36 SRA applications to the Land and Property Rights Tribunal (the "LPRT"). This volume of applications risks overrunning the capabilities of the LPRT to adjudicate claims efficiently. The current RVO would also produce the potential result of a litany of claims filed in the Court of Justice seeking debt judgments for the Outstanding Surface Lease Rentals, which would also be an inefficient and duplicative process.

29. The Monitor relies on the case of *Re Acerus Pharmaceuticals Corporation [Acerus]* to support its argument that the Transaction satisfies section 36 of the CCAA.¹⁹ In that case, the Court was satisfied that stakeholders were consulted during the sale process and that

¹⁵A&R Subscription Agreement, Appendix "B" to the 5th Report, at page B-2.

¹⁶ Monitor's Brief at paras 28-33.

¹⁷ *Harte Gold Corp (Re)*, 2022 ONSC 653 (CanLII) ("*Harte Gold*") para 38.

¹⁸ *Harte Gold* at para 38.

¹⁹ Monitor's Brief at para 26.

no stakeholder would be materially disadvantaged by the subscription agreement and the proposed transaction relative to any other viable alternative.²⁰

30. With respect, this matter is markedly different from the *Acerus* decision. In this case, there is no evidence that landowners have been consulted in drafting the proposed Transaction and severe prejudice to landowners will result if the Neufeld Claim is not deemed a Retained Liability, as opposed to the viable alternative. If the Transaction fails, landowners will still have their right of recovery under section 36 of the SRA, in addition to the Orphan Well Association's ("OWA") guarantee of site remediation and reclamation. In effect, the landowners' claims are secured by the Government of Alberta.

31. The Proposed Amendments are a viable alternative, as the additional cash to close effectively accelerates the debt Long Run already acknowledges will be a Retained Liability. By deeming the Neufeld Claim as a Retained Liability, it also centralizes potentially over one thousand instances of Long Run's breaches of contract into a single proceeding, which achieves judicial economy and avoids duplication of legal fees, time, and expense.

iii. *If the Transaction Does Not Close, Landowners Will Not Be Materially Worse Off Than if the Transaction Proceeds in its Current Form*

32. A landowner owed unpaid Surface Lease Rentals by an operator may apply to the LPRT under section 36 of the SRA.²¹ This right applies regardless of the Operator's solvency and explicitly survives bankruptcy (but cannot be advanced while a stay is in place).²² In the event of a section 36 application being submitted against a bankrupt operator, the LPRT directs the Minister to issue payment out of the General Revenue Fund.²³

33. In essence, landowner claims for Outstanding Surface Lease Rentals are guaranteed by the Government of Alberta. Courts have held that section 36 of the SRA is necessary as landowners are not entitled to refuse entry to an operator.²⁴

34. The recent case of *Bateman v Alberta (SRB)* [*Bateman*] highlights that full annual rent must be paid by the LPRT barring circumstances that would give rise to an absurdity, an unjustified payment, or an unjust enrichment, such as a landowner preventing operator access to reclaim the lands or excessive delay in seeking compensation.²⁵

35. If the Transaction does not close, Landowners will **not** be materially worse off than if the Transaction proceeds in its current form, as the Outstanding Surface Lease Rentals will be backstopped by the Government of Alberta by virtue of section 36 of the SRA.

²⁰ *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314 (CanLII) ("*Acerus*") at para 31.

²¹ SRA at section 36.

²² *Bateman v Alberta (Surface Rights Board)*, 2023 ABKB 640 (CanLII) ("*Bateman*") at para 27.

²³ SRA at section 36(6); *Bateman* at para 12.

²⁴ *Bateman* at para 3.

²⁵ *Bateman* at para 73.

36. Similarly, in the event Long Run undergoes a liquidation, producing or otherwise saleable PN&G Assets will be sold to a solvent operator. From the Landowner's perspective, depending on the conditions of the license transfer, Outstanding Surface Lease Rentals will be paid by the new operator, or otherwise be collectible by virtue of section 36 of the SRA. The new operator will also assume all reclamation and remediation obligations.
37. All PN&G Assets not sold to a solvent operator will be assigned to the Orphan Well Association ("OWA"). The OWA will perform all necessary reclamation and remediation work, with the result of the land being returned to its original condition and being turned back over to the landowner for continued agricultural operations.
38. To the extent we received instructions from our clients prior to the Application, they were unanimous that they would rather the OWA take over care of their lease sites and commence reclamation than have the Purchaser assume ownership of said leasehold interests and refuse to pay Outstanding Surface Lease Rentals, as is contemplated in the current Transaction.

iv. Deeming the Neufeld Claim a Retained Liability Discourages Unilateral Non-Payment of Surface Lease Rent by Operators

39. If the Neufeld Claim is not a Retained Liability, and the Purchaser does not pay the Outstanding Surface Lease Rentals, hundreds of landowners with thousands of leases on their land will be forced, if they want to recover their individual portions of the Outstanding Surface Lease Rentals, to: (a) file section 36 SRA applications with the LPRT; or (b) pursue debt claims in the Court of Justice. This result risks flooding the capabilities of the LPRT and reducing judicial economy, as previously discussed.
40. The purpose of the section 36 SRA process is to allow landowners to seek compensation for unpaid rent. The reality, however, is that many landowners are not aware of their rights under section 36 of the SRA. Consequently, if an operator does not pay them rent, landowners often do nothing about it, as is evidenced by the \$6.5 million in Outstanding Surface Lease Rentals.
41. When Long Run unilaterally decided to stop paying Surface Lease Rentals to Albertan landowners, starting in 2020, it took advantage of the section 36 SRA process and the knowledge that many landowners are not aware of their rights under the SRA. Long Run reasonably predicted that many, if not most, landowners would not file section 36 SRA applications to recover their unpaid rent for three reasons: first, they would not know that they could; second, they would not know how; and third, they would not take the time to do so. Further, even if those landowners did file applications, it would take months or years for those applications to be approved and processed, resulting in Long Run receiving the time value of that money.
42. Refusing to deem the Neufeld Claim as a Retained Liability will allow for the Purchaser to continue taking advantage of the section 36 SRA process. The Purchaser may continue to leave the Outstanding Surface Lease Rentals unsatisfied, putting the onus of a section 36

application on the landowner, knowing that many landowners will not make such applications.

43. Refusing to deem the Neufeld Claim a Retained Liability will also send the message to other operators that unilateral and total cessation of Surface Lease Rentals is not only without penalty, but is the financially efficient thing to do.
44. Whether the Neufeld Claim will be certified is an open question, but is one for a Court to determine. If the Neufeld Claim is transferred, that question will never be answered.

b) Long Run's Rental Arrears Letter offends the governing principles in the CCAA and the *Soundair* Factors

45. While a class action is ongoing, the defendant has an obligation to notify potential class members of the class action before settling with individual defendants. In *Lewis v. Shell Canada Ltd.* [*Lewis*], for example, the defendant had retained the services of an independent appraiser to negotiate settlement with potential class members. The Court found this was an unfair process unless the individual settlers were informed of the existence of the class action before settling, and an order was issued accordingly.²⁶
46. *Harte Gold* provides that the Court's exercise of discretion under section 11 of the CCAA must further the remedial objectives of the CCAA and be guided by the baseline considerations of "appropriateness, good faith, and due diligence".²⁷
47. The Monitor's Brief further explains that the Court must consider the factors set out in *Royal Bank v Soundair Corp* [*Soundair*],²⁸ which asks a court to determine, *inter alia*, whether the interests of all parties have been considered and whether there has been unfairness in the working out of the process.²⁹
48. The Rental Arrears Letter offends the guiding principles of section 11 of the CCAA and the *Soundair* factors for various reasons:
 - a. Long Run acknowledges that all Outstanding Surface Lease Revenue will be Retained Liabilities, yet chose to attempt to reduce those liabilities by up to \$3.25 million for the sole benefit of the Purchaser and at the expense of other stakeholders;
 - b. Long Run did not recommend landowners seek independent legal advice prior to signing the offer;

²⁶ *Lewis v. Shell Canada Ltd.*, 2000 CanLII 22379 (ON SC) (CanLII) ("*Lewis*"), particularly paragraph 16, in which the Court states, "It is purposeful that claimants receive independent legal advice before settling with Shell. Claimants need to know the alternatives in making decisions that will affect their legal rights."

²⁷ *Harte Gold* at para 31; Monitor's Brief at para 31.

²⁸ *Royal Bank v Soundair Corp*, 1991 CanLII 2727 (ONCA) (CanLII) ("*Soundair*") at paras 16, 82.

²⁹ Monitor's Brief at para 24.

- c. Landowners did not receive any valid consideration for signing the Rental Arrears Letter. Payment of what is partially owed is not consideration in exchange for forfeit of the rest, especially considering that landowners have the right to claim all rental arrears under section 36 of the SRA; and
 - d. Long Run did not disclose the existence of the Neufeld Claim, or their rights as a potential class member of the Neufeld Claim, in the Rental Arrears Letter.
49. Furthermore, Alberta is an “opt-out” jurisdiction as regards class actions.³⁰ Therefore, all landowners owed the Outstanding Surface Lease Rentals are *prima facie* members of the Neufeld Claim and are therefore represented by KMSC.
50. The Rental Arrears Letter also ignores the fact that section 36 of the SRA provides landowners a statutory right of recovery even if the transaction fails and Long Run’s assets are liquidated. This critical point is overlooked in the Monitor’s application and arguments.
51. The Rental Arrears Letter is a concerning development. At face value, it may be construed as an attempt by Long Run to reduce the liability of the Purchaser relating to unpaid Surface Lease Rentals by 50%, which could amount to up to \$3.25 million dollars. Not only does this attempt contradict Long Run’s obligation to deal with its debts in good faith, but it also amounts to an unfair tactic that will enrich only the Purchaser at the direct detriment of numerous stakeholders—stakeholders who have little ability to resist the placement of oil and gas developments on their land, and no ability to force their removal.
52. We submit that the court has broad jurisdiction under section 11 of CCAA to order such things as are necessary to fulfill remedial objectives. Deeming the Rental Arrears Letter to be of no force and effect will fulfill these remedial objectives; to let it stand would violate them.

V. RELIEF SOUGHT

53. Neufeld seeks the following relief:
- a. An amendment to the A&R Subscription Agreement classifying the Neufeld Claim as a “Retained Liability”;
 - b. Amending section 2.2 of the A&R Subscription Agreement to provide that the Purchaser shall furnish an additional cash payment of \$7,500,000 to be held in trust by the Monitor to satisfy the Neufeld Claim and Outstanding Surface Lease Rentals and interest, in whole or in part; and
 - c. An order deeming the Rental Arrears Letter of no force or effect.

³⁰ *Class Proceedings Act*, at section 17.

d. Such further and other relief as the Court deems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

KMSC Law LLP

Per:  _____

Kristian Toivonen
Counsel for Abe Neufeld as Representative Plaintiff

TABLE OF AUTHORITIES

TAB

1. *Class Proceedings Act*, [SA 2003, c C-16.5](#)
2. *Surface Rights Act*, [RSA 2000, c S-24](#)
3. *Smith v Lafarge Canada Inc.*, [2022 ABQB 289](#)
4. *Harte Gold Corp (Re)*, [2022 ONSC 653](#)
5. *Horvath v Sinopec Daylight Energy Ltd.*, [2020 ABSRB 395](#)
6. *Bateman v Alberta (SRB)*, [2023 ABKB 640](#)
7. *Lewis v. Shell Canada Ltd.*, [2000 CanLII 22379](#)
8. *Royal Bank v Soundair Corp.*, [1991 CanLII 2727](#)
9. *Acerus Pharmaceuticals Corporation (Re)*, [2023 ONSC 3314](#)