

Clerk's stamp:

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COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
RESPONDENT	COMPEER FINANCIAL PCA
APPLICANT	SUNTERRA FARMS LTD., SUNWOLD FARMS LIMITED, SUNTERRA ENTERPRISES INC., RAY PRICE , DEBBIE UFFELMAN, CRAIG THOMPSON, DAVID PRICE, ARTHUR PRICE and GLEN PRICE

**DOCUMENT**

**BRIEF OF THE APPLICANT**

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**APPLICANT**

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**BRIEF OF THE APPLICANT REGARDING THE APPLICATION TO STRIKE DOCUMENTS,  
DISMISS OBJECTIONS AND REQUIRE WITNESSES TO ANSWER TO BE DECEMBER 1,  
2025**

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**I. INTRODUCTION**

1. On December 1, 2025, this Court will be asked to consider a request by the defendants in this action (herein referred to as “**Sunterra**”) with respect to the following matters:
  - (a) the validity of objections made by counsel for Compeer Financial, PCA (“**Compeer**”) during the examinations of;
    - (i) Nicholas Rue (“**Mr. Rue**”) on October 21, 2025;
    - (ii) Steve Grosland (“**Mr. Grosland**”) on October 22, 2025;
    - (iii) Bill Moore (“**Mr. Moore**”) on November 13, 2025; and
    - (iv) Jase Wagner (“**Mr. Wagner**”) on November 13, 2025.
  - (b) Compeer’s refusal to respond to any undertakings requested during the examinations of Mr. Moore and Mr. Wagner; and
  - (c) The validity of the affidavits of Nicholas Rue, Steve Grosland, and Stephanie Dumoulin, served on November 17, 2025.
2. This brief concerns only claims within Action No. 2501-19283 (the “**Compeer Action**”), and will not speak to claims made with respect to Action No. 2501-06120 (the “**NBC Action**”).
3. Additionally, if the within application is successful we are putting Compeer on notice that we will be seeking responses within 24 hours of the Court Order such that we will be able to proceed with the Compeer application in chief on December 4<sup>th</sup> and 5<sup>th</sup>.

**II. FACTS**

4. Pursuant to the Originating Consent Order in this action, affirmed by Justice Lema on July 24, 2025 (the “**Original Consent Order**”), Mr. Rue was cross-examined by Sunterra on October 21, 2025, on the contents of his first affidavit filed June 19, 2025 and his second affidavit, sworn October 15, 2025.
5. Pursuant to the Original Consent Order, Mr. Grosland was cross-examined by Sunterra on October 22, 2025 on his affidavit sworn June 20, 2025.

6. During the examinations of Mr. Rue and Mr. Grosland, Sunterra requested numerous undertakings of Mr. Grosland and Mr. Rue.
7. The transcripts from the examinations of the above deponents were provided to the parties on October 27, 2025.
8. On October 30, 2025, Counsel for Compeer provided their responses to the undertaking requests of Mr. Rue and Mr. Grosland. Of the fifteen undertaking requests of Mr. Rue, six were refused.<sup>1</sup> Of the three undertakings requested of Mr. Grosland, one was refused. In neither undertaking response did counsel for Compeer provide a basis for their refusals to such undertakings.
9. On October 17, 2025, Justice Lema provided a Judicial Endorsement (the “October 17 Endorsement”) granting an application brought by Sunterra for the production of Mr. Wagner and Mr. Moore for questioning by Sunterra. In his reasons, Justice Lema stated that the Original Consent Order allowing for the production of such witnesses “referenced” Rule 6.8 of the Alberta Rules of Court, but that “that reference to Rule 6.8 is purely to invoke its procedural mechanics”, and therefore was not intended to subject the selections to the independent rule of “likelihood of relevance and materiality”.<sup>2</sup>
10. Subsequent to Justice Lema’s Order of October 17, 2025, the examinations of Mr. Moore and Mr. Wagner were conducted virtually on November 12, 2025.
11. Apart from the witness examinations pursuant to the Procedural Order, undertakings responded to, as well as any affidavits that Compeer elected to file, there was no other form of documentary or evidentiary discovery available to the parties.
12. During the examinations of Rue, Grosland, Moore, and Wagner, counsel for Compeer made repeated objections to questions by Sunterra, primarily on the basis of privilege.<sup>3</sup> During none of these objections did counsel for Compeer provide evidentiary reasoning for any of their privilege claims.

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<sup>1</sup> Undertaking responses of Nicholas Rue, filed November 20, 2025; Undertaking Responses of Steve Grosland, served November 20, 2025

<sup>2</sup> National Bank of Canada v Sunterra Food Corporation, 2025 ABKB 606 [*October 17 Endorsement*]

<sup>3</sup> Application of Sunterra, filed November 20, 2025, Affidavit of Andrea Arndt, sworn November 20, 2025, at Exhibits A, B, C, D [*Arndt Affidavit*]

13. During the examinations of Rue, Grosland, Moore, and Wanger, counsel for Sunterra attempted to ask the deponents about the purpose of various meetings which occurred involving those deponents. Those questions were also objected to by Compeer on the basis of privilege.<sup>4</sup>
14. During the questioning of Mr. Moore, counsel for Compeer stated that “this is an examination under Rule 6.8 (...) accordingly, consistent with that rule we will not be providing any undertakings”<sup>5</sup>. Compeer proceeded to refuse all undertakings requested during the examinations of Mr. Moore and Mr. Wagner.
15. The transcripts of the above examinations of Mr. Moore and Mr. Wagner were ordered by Sunterra on a rush basis and received on November 15, 2025.
16. On October 27, 2025, pursuant to the Original Consent Order, counsel for Compeer served upon Sunterra an amendment to the Compeer’s Application for Summary Judgement, containing additional named parties.
17. The amended Application of Compeer also contained additional evidence to be relied upon which was not contained in the original application filed by Compeer on June 23, 2025, including the affidavit of Stephanie Dumoulin.
18. On October 27, 2025, Compeer also served on Sunterra an amended Statement of Claim.
19. On November 13, 2025, the Parties amended the Litigation Plan of the Original Consent Order by written Agreement (the “**Amended Order**”). The Amended Order stated that:
  - (a) Any amendments to the Application for summary judgement and dismissal, originally filed by Compeer on June 23, 2025, must be made by October 27, 2025; and
  - (b) Compeer was granted leave to file an amended Statement of Claim;
  - (c) Compeer shall file its brief in support of its Application by November 19, 2025<sup>6</sup>

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<sup>4</sup> *Ibid*

<sup>5</sup> *Arndt Affidavit*, *supra* note 4 at Exhibit C

<sup>6</sup> Amended Form of Procedural Order, Filed on November 13, 2025 [Amended Consent Order]

20. On November 17-19 2025, Compeer served the following unfiled documents upon Sunterra:
- (a) The Affidavit of Mr. Rue, affirmed November 18, 2025<sup>7</sup>, which contained:
    - (i) Corrections with respect to answers provided during the questioning of Mr. Rue on October 21, 2025.
  - (b) The affidavit of Stephanie Dumoulin, sworn November 17, 2025, which had attached as exhibits<sup>8</sup>:
    - (i) Corporate searches of Sunterra Farms Ltd., Sunwold Farms Limited, and Sunterra Enterprises Inc.
    - (ii) a copy of the transcript of the motion hearing held before the United States District Court for the District of South Dakota, on May 29, 2025 in the matter of Compeer Financial, PCA v Sunwold Farms, Inc., Sunterra Farms Iowa, Inc., and Lariagra Farms South, Inc., Case No. 4:25-cv-04044.
    - (iii) a true copy of the transcript recording the oral ruling issued by the United States District Court for the District of South Dakota on May 30, 2025 in Case No. 4:25-cv-04044.
  - (c) The Affidavit #2 of Steve Grosland, sworn November 19, 2025<sup>9</sup>, which included as exhibit 33 a copy of the Order Granting Receiver's Motion to Authorize Private Sale issued by the United States District Court, District of South Dakota on May 30, 2025, in Case No.4:25-cv-04044

### III. **ISSUES**

- (d) Are the objections made by counsel during the examinations of the Compeer deponents valid bases for objection?
- (e) Is Compeer justified in its refusal to provide any undertakings to Sunterra for Mr. Bill Moore and Mr. Jase Wagner on the basis that the questionings occurred pursuant to Rule 6.8 of the Alberta Rules of Court?

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<sup>7</sup> Affidavit of Nicholas Rue, sworn November 18, 2025

<sup>8</sup> Affidavit of Stephanie Dumoulin, sworn November 19, 2025

<sup>9</sup> Affidavit of Steve Grosland, sworn November 19, 2025

- (f) Is Compeer justified in its refusals to respond to the undertakings of Mr. Rue and Mr. Grosland?
- (g) Should the Affidavits served by Compeer on November 19, 2025 be struck?

#### IV. **ARGUMENT**

##### **A. Undertakings and Rule 6.8**

###### *Rule 6.8 is Intended Only to Apply for Procedural Reasons*

- 21. In the cross-examination of Mr. Moore, Mr. Caylor, as counsel for Compeer, stated that “this is an examination under Rule 6.8 (...) accordingly, consistent with that rule we will not be providing any undertakings.”<sup>10</sup>
- 22. Rule 6.8 of the *Alberta Rules of Court* states as follows:
  - 6.8** A person may be questioned under oath as a witness for the purpose of obtaining a transcript of that person’s evidence for use at the hearing of the application, and
    - (a) [rules 6.16](#) to [6.20](#) apply for the purposes of this rule, and
    - (b) the transcript of the questioning must be filed by the questioning party
- 23. Rule 6.16 of the Rules is as follows:

###### Contents of notice of appointment

###### **6.16(1)** A notice of appointment for questioning must

- (a) specify a reasonable date, time and place for the appointment for questioning,
- (b) describe any records the person is required to bring to the appointment for questioning, and
- (c) request the person to be questioned to specify any arrangements necessary to accommodate the person’s reasonable needs which, to the extent reasonably possible, must be accommodated.

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<sup>10</sup> Transcript of the Cross-Examination of William Moore by Sunterra on November 12, 2025, at page 13, Line 11

**(2)** The notice of appointment for questioning must be served 5 days or more before the appointment date

(a) on the person to be questioned, or if a lawyer acts for that person, on the lawyer, and

(b) on each of the other parties.

**(3)** On application, the Court may resolve a dispute over the date, time, place and person to be questioned and any related matters, and the records to be produced at the appointment for questioning.

**(4)** The attendance of a person to be questioned and the records to be produced at the appointment for questioning may be required by an order under [rule 6.38](#).

24. Rule 6.20 is as follows:

**6.20(1)** A person questioned on an affidavit under this Part or a person questioned as a witness for the purpose of obtaining a transcript under this Part for use at a hearing may also be questioned by any other party, and the person questioned may then be questioned again by the questioning party on that person's answers to the questions of other parties.

**(2)** Questioning and questioning again under this rule by parties adverse in interest may take the form of cross-examination.

**(3)** The questions and answers must be recorded word for word by a person qualified to do so

(a) by a method that is capable of producing a written transcript, and

(b) in a manner agreed on by the parties or directed by the Court.

**(4)** The person recording the oral questioning must

(a) keep in safe custody the recorded questioning,

(b) if required to do so, honestly and accurately transcribe the recorded questioning and deliver a copy of the transcript, as required, and

(c) on or attached to any transcript  
(i) state the person's name,  
(ii) specify the date and place where the questioning occurred, and

(iii) certify the transcript, or the portion of the questioning transcribed, as complete and accurate.

**(5)** The questioning party must

(a) make necessary arrangements for the questioning to be recorded, and

(b) file the transcript unless the Court otherwise orders.



(6) A person is qualified to record and transcribe oral questioning under this Part if the person is

- (a) an official court reporter,
- (b) a person appointed by the Court as an examiner under the *Alberta Rules of Court* (AR 390/68), or
- (c) a shorthand writer, sworn to record the questioning word for word and to impartially fulfil the duties imposed by subrule (4), who
  - (i) is an agent or employee of an official court reporter, or
  - (ii) has been approved by the parties.

25. While there is some recent Alberta caselaw which has suggested that a questioning under Rule 6.8 may not require the answering of undertakings, undertakings are not explicitly mentioned within the above Rules. Additionally, all caselaw in which it is determined that undertakings are not mandated is on the basis of principled reasoning associated with obligations to “non-party witnesses”, so as to avoid intrusive requests beyond those typically expected in a cross-examination of a non-party witness otherwise uninvolved in the litigation.

***Great North Equipment Inc v Penney*, 2024 ABKB 391 at para 21; see also *Gow Estate (Re)*, 2021 ABQB 305; *Dechant v. Law Society of Alberta*, 2000 ABCA 265**

26. The case at bar is distinguishable, firstly, as per Justice Lema’s reasoning, the reference to Rule 6.8 within the Originating (and Amended) Consent Order is intended exclusively for the purposes of procedure, and does not carry the substantive or analytical weight of such a section (as demonstrated by the inapplicability of the “relevance and materiality” rule in the questionings). Similarly, the “principled” basis for the refusal of undertakings from which these cases derive their reasoning- that the individuals in question have not “consented” to participation in these proceedings - is inapplicable. The witnesses in question are corporate officers of the Plaintiff, Compeer, and are already, by virtue of their roles within the corporation, involved in the proceedings. Further – as found by J. Lema, Compeer consented to their participation in the Procedural Order and as such they are not non-parties.
27. Unlike a non—party, who the court would like to avoid “forcing” to provide an affidavit, the questioned individuals could have given affidavits, as the other Compeer deponents have. It was not Wagner or Moore who refused to have affidavits sworn, it was Compeer. However, notwithstanding that Compeer elected to have them not file affidavits, Compeer

did consent to having them examined as witnesses pursuant to the Procedural Order. As such their participation in these proceedings was found to be by consent.

28. The final distinguishing factor in this case is that undertakings may be refused under Rule 6., per some caselaw, on the basis that there are other solutions available at law in the event of an uncooperative witness, such as asking them to re-attend. However, Compeer too opposes such a request and indeed refused to produce them other than in the limited window, meaning this is not an equally available 'solution' in this manner.
29. Finally, unlike a Questioning under the Rules in which the parties have access to other Rules mandating documentary disclosure, there is no such corresponding disclosure rule in this proceeding. In other words, in litigation in the ordinary course Compeer would have had to produce all relevant and material information through an Affidavit of Records and then would have had to make a litigation representative available to answer all relevant questions and provide all relevant undertakings. It is within the context of these disclosure obligations that the Court has found Rule 6.8 does not require further undertaking disclosure from a non-party witness. None of those factors are present here, namely;
  - (a) there is no documentary disclosure through an affidavit of records;
  - (b) there is no litigation representative witness;
  - (c) these are not non-party witnesses; and
  - (d) the witnesses are being produced and questioned by consent vis a vis the Procedural Order as found by J. Lema in the October decision.

*Sunterra has no other manner of obtaining this information*

30. In addition to the procedural nature in which Rule 6.8 is invoked, the case at bar is not a standard case. There has been no discovery or affidavit of records whereby Sunterra has previously been provided the opportunity to request the records in question. A blanket refusal to all undertakings would therefore bar Sunterra from accessing potentially key information, without considering the records individually.

#### ***B. Objections of the Basis of Privilege***

31. In addition to the above objections to undertakings, counsel for Compeer made repeated objections on the basis of privilege. There are two types of privilege in Canada: solicitor-client and litigation privilege. Unfortunately, counsel for Compeer failed to specify the type of privilege under which they were objecting with respect to each objection. However, in neither case has Compeer sufficiently met its burden in establishing that privilege attaches to the objected-to communications.

*Privilege involved In-House Counsel and must be evaluated on a case-by-case basis*

32. Counsel for Compeer has failed to specify the basis for its privilege. In any event, such objections on the basis of privilege must be offered with some basis to support their assertion. This is because, firstly, those objections with respect to privilege were raised in instances of interactions with in-house counsel. As was recognized by the Supreme Court of Canada, in house counsel often occupy more roles than simply that of offering legal counsel to a corporation. As such, whether particular communications with in-house legal counsel are privileged must be assessed on a case-by-case basis.

***Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31; *NEP Canada ULC v MEC Op LLC*, 2016 ABQB 186 at para 24**

33. This includes, primarily, whether the communications in question entailed the seeking or giving of legal advice. Communications with in-house counsel which do not involve the seeking or giving of such advice are not protected by privilege, and the simple presence of in-house counsel does not provide a shield of privilege. Compeer has offered no evidence to support an assertion of privilege, or a basis that legal advice was being provided in the objected-to communications.

***R. v. Campbell*, [1999] 1 SCR 565**

34. In addition to the above, Compeer has nonetheless failed to establish any basis for a protection on the basis of litigation privilege. Litigation privilege attaches only to communications which were, in the first instance, created in the contemplation of litigation.

***Blank v. Canada (Minister of Justice)*, 2006 SCC 39**

*Compeer has not established that Litigation Privilege Attaches*

35. The focus, in the evaluation of whether a communication is covered by litigation privilege, is not the purpose for which they were obtained, but rather the purpose for their original creation.

***Alberta v Suncor Inc, 2017 ABCA 221 at para 37***

***C. Compeer's objections hinder the evaluation of the dominant purpose test***

36. In order for litigation privilege to attach, the dominant purpose for a communication in the first instance must be litigation. Having legal counsel present in meetings, or declaring that litigation has commenced, is not sufficient, and a corporation cannot “throw a blanket over” materials created or collected during an internal investigation.

***Alberta v Suncor Inc, 2017 ABCA 221 at para 34; Canadian Natural Resources Limited v ShawCor Ltd., 2014 ABCA 289***

*Counsel for Compeer provided no evidentiary basis for its objections*

37. Further, in making an objection, the counsel in question must provide a sufficient basis which allows a later assessor to evaluate the claim. This includes providing an evidentiary basis for the claim of litigation privilege. Compeer at no time provided an evidentiary basis for their objections.

***Canadian Natural Resources Limited v ShawCor Ltd., 2014 ABCA 289 at para 60; NEP Canada ULC v MEC Op LLC, 2016 ABQB 186at para 49***

*Compeer's Objections were Blanket Objections and therefore invalid and overbroad*

38. In objecting to all question respecting the purposes of meetings, and in objecting to any questions with respect any all communications or other information concerning the “internal investigation” at Compeer during the examination of Mr. Moore (despite such answers being permitted in the examination of Steve Grosland), Compeer attempted to “throw a blanket” over all communications, in a manner which is specifically prohibited by the caselaw. Additionally, in prohibiting all questions concerning the purpose of such communications, Compeer has barred both Sunterra and the Court from evaluating the basis of such objections.

***a. Right to a Useful transcript***

39. In addition to the above, Sunterra has a right to a useful transcript. The blanket objections being asserted by Compeer effectively hinder the usefulness of the transcript as evidence, without providing a substantial basis for the failure to respond to questions which would otherwise inform Sunterra's response, and which in part form the basis for Compeer's claim.

***NEP Canada ULC v MEC Op LLC, 2016 ABQB 186 at para 51***

40. Compeer claims that they had no knowledge of Sunterra's alleged activities, and provide dates on which the alleged activities were discovered. Therefore, the knowledge of those individuals within the control of the corporation, and their understanding of the Sunterra matter as of February 2025 (during which they claim to have discovered the alleged damage), form a part of the basis for the Compeer pleadings. Compeer cannot, therefore, "reasonably use privilege as a shield for its officers in order to prevent the opposing party from investigating those claims."

***NEP Canada ULC v MEC Op LLC, 2016 ABQB 186 at para 33***

***D. Affidavits do not abide by Rules with Consent Order or the Rules of Court***

*Corrections must be provided as soon as is practicable*

41. The affidavit of Nicholas Rue was filed in on November 19, 2025. However, the transcript of Mr. Rue's examination was available to all parties as of October 27, 2025. The Alberta Rules of Court require that affidavits containing corrections be filed as soon as is reasonably practicable. Compeer failed to file this affidavit for three weeks, upon its receipt. Considering the resources available to counsel for Compeer and the length of the affidavit, three weeks is far beyond what would be considered as "as soon as is reasonably practicable in the circumstances"

*The Consent order does not contemplate for the filing of additional affidavits and therefore requires a new consent order*

42. The Amended Consent Order contemplates "amendments to the parties to the application shall be made by October 27, 2025"<sup>11</sup>. However, the amended application, in addition to

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<sup>11</sup> Amended Consent Order, supra note at para

amending the parties to the application, additionally is amended so as to include additional evidence to be relied upon by Compeer, namely the affidavit of Stephanie Dumoulin.

43. The Judicial Endorsement of October 17 makes clear that “painstaking attention” was paid to the mapping out of the steps to the December hearings.<sup>12</sup> If Compeer wished to amend its application beyond that which is contemplated for, this would, per the Order of October 17, require an amendment of the Consent Order, as was done by the parties on November 13, but which nonetheless failed to include amendments of the nature in the amended application.
44. With respect to the Grosland affidavit, the Consent Order is in this respect once again silent. It should be noted, however that the NBC consent order, to which Compeer had access, did contemplate such potential evidence to be filed beyond the agreed-upon deadline, demonstrating that in the event that such evidence need be filed, it requires an amendment to the Consent Order at the consent of the parties.

*The inclusion of new exhibits prejudices Sunterra by precluding Sunterra from questioning Mr. Grosland on such exhibits*

45. Notwithstanding the above, the additional exhibit Compeer is attempting to include in the Grosland Affidavit was evidence to which Compeer had access upon the filing of the affidavit. Failure to provide all exhibits relied upon in an affidavit, but to which Compeer had access at the filing of that affidavit, is clearly prejudice against the Sunterra parties as it deprived the Sunterra parties of the right to question Mr. Grosland with respect to that exhibit, when he was questioned on the contents of his affidavits on October 22, 2025.

## **V. CONCLUSION**

46. The objections and undertakings sought are key as they provide evidence as to Compeer’s knowledge of the underlying facts of the alleged conduct of Sunterra. In short, an essential component of Compeer’s claim is that Sunterra deceived Compeer and that Compeer did not know about or discover Sunterra’s activities relating to the use of conditional credit until February 2025. Therefore, information relating to Compeer’s internal investigations, namely what it knew or ought to have known and when it knew or ought to have known it – is key evidence which Sunterra has a right to interrogate.

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<sup>12</sup> October 17 endorsement, supra note at para

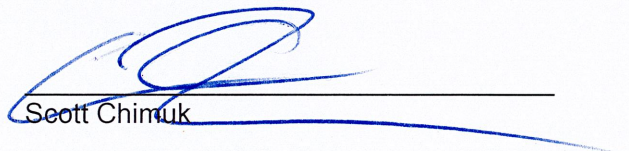


Sunterra has no way of knowing what Compeer knew and when Compeer knew it – other than through questions and undertakings of Compeer's witnesses including those in control of the corporation at the time. Sunterra is entitled to this key information.

47. Sunterra respectfully submits that the Court dismiss the objections of Compeer and compel the witnesses to answer, compel the witnesses to provide answers to the undertaking requests of Sunterra, and strike the affidavits of November 19, 2025 from these proceedings. Further, with respect to the answers of undertakings and questions, Sunterra submits that such answers be provided within 24 hours, in order to allow Sunterra to proceed with its submissions concerning the Compeer Action on December 4<sup>th</sup> and 5<sup>th</sup> 2025.

RESPECTFULLY SUBMITTED THIS 28 day of November, 2024.

**BLUE ROCK LAW LLP**



\_\_\_\_\_  
Scott Chimuk

VI. **AUTHORITIES**

**Tab**      **Authority**

1.      Alberta Rules of Court, Alta Reg 124/2010, at Rules 6.8, 6.16, and 6.20
2.      *Great North Equipment Inc v Penney*, 2024 ABKB 391
3.      *Gow Estate (Re)*, 2021 ABQB 305
4.      *Dechant v. Law Society of Alberta*, 2000 ABCA 265
5.      *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31
6.      *NEP Canada ULC v MEC Op LLC*, 2016 ABQB 186
7.      *R. v. Campbell*, [1999] 1 SCR 565
8.      *Blank v. Canada (Minister of Justice)*, 2006 SCC 39
9.      *Alberta v Suncor Inc*, 2017 ABCA 221
10.     *Canadian Natural Resources Limited v ShawCor Ltd.*, 2014 ABCA 289