

Ministry of Environment and Resources v. Russell Gregory

Candy Dominique
on Thursday, November 4, 2021



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1 COURT FILE NUMBER Q.B.G. 1705 of 2020
2 COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
3 IN BANKRUPTCY AND INSOLVENCY
4 JUDICIAL CENTRE REGINA

5
6 APPLICANT BDO CANADA LIMITED in its capacity
7 as RECEIVER OF BOW RIVER ENERGY LTD.

8
9 RESPONDENT BOW RIVER ENERGY LTD.

10

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13 TRANSCRIPT OF CROSS-EXAMINATION ON AFFIDAVIT OF
14 CANDY DOMINIQUE BY MR. GREGORY - Vol 1
15 Held via Videoconference on November 4, 2021
16 -----

17

18 APPEARANCES:

19 (ALL COUNSEL APPEARING BY VIRTUAL TECHNOLOGY)

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21 COUNSEL FOR MINISTRY OF ENERGY
22 AND RESOURCES

23

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25 COUNSEL FOR R.M. OF EYE HILL

26

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1 (Proceedings commenced at 10:04 a.m.)

2 CANDY DOMINIQUE, Affirmed,

3 Questioned by MR. GREGORY:

4 Q. Good morning, Ms. Dominique.

5 A. Good morning.

6 Q. You're the Candy Dominique that's named in an
7 affidavit in Q.B.G. 1705 of 2020, correct?

8 A. Correct.

9 Q. And on page 3 of your affidavit, there
10 appears your name in italics. Was that your
11 electronic signature done by Adobe?

12 A. Correct.

13 Q. And you Adobe signed on March 19th, 2021; is
14 that correct?

15 A. Correct.

16 Q. And what electronic means was used to have
17 you give your oath?

18 A. Over Teams, Microsoft Teams.

19 Q. And that was with Tava Burton?

20 A. Yes.

21 Q. Thank you. We're conducting this
22 cross-examination today with the court
23 reporter remote, and so it's really important
24 that when we ask questions and respond that
25 we give enough time between the question and

1 the answer, and so I'll certainly do my best
2 not to interrupt you today, and if you would
3 do the same to allow me to ask my full
4 question before you would respond, it will
5 make it much easier for the court reporter.

6 **A.** Okay.

7 **Q.** In paragraph 1 of your affidavit, you
8 indicate that you are a professional
9 engineer; is that correct?

10 **A.** That's correct.

11 **Q.** And you have an environmental specialty or
12 designation?

13 **A.** Correct.

14 **Q.** Paragraph 1 also indicates that you are the
15 Liability Regulations Manager in the
16 Liability Management Branch at the Ministry
17 of Energy and Resources, correct?

18 **A.** Correct.

19 **Q.** You understand that in today's matter, I
20 might refer to the Ministry, and I'm
21 referring to the Ministry of Energy and
22 Resources?

23 **A.** Correct.

24 **Q.** And you might hear me say Bow River today.
25 You'll understand I mean Bow River

1 Energy Ltd.?

2 **A.** Correct.

3 **Q.** What role and responsibilities do you have as
4 liability regulations manager?

5 **A.** I administer the LLR program. That's the
6 Licensee Liability Rating Program. So what
7 that does is we try and protect the Orphan
8 Fund and the risks coming to the Orphan Fund.
9 So we look at companies and their -- we
10 assess their LLR rating every month to
11 determine those that -- we look at -- the LLR
12 rating is basically their assets, the
13 company's assets, divided by their liability,
14 defined by our regulations in our PNG
15 Directive 25.

16 So what we do is every
17 month -- within our regulations there is --
18 if a company's LLR is under one, so if they
19 have more liability than they have assets, we
20 will then charge them a security deposit to
21 keep that in our fund in a holding account so
22 that at the time, if they do become an
23 orphaned company, we can use that fund, that
24 money, to offset the cost that it's going to
25 take to abandon and reclaim those sites on

1 that company's behalf if they no longer exist
2 or can't be located or don't have the
3 financial means to be able to do that on
4 their own.

5 **Q.** That word "regulations" is in your job
6 description.

7 **A.** Correct.

8 **Q.** What is meant by "regulations"?

9 **A.** I carry out the regulations, so you will see
10 in Section 115 to 117 in our Oil and Gas
11 Conservation Regulations, 2012, that there is
12 a definition of when we collect a security
13 deposit. We collect a security deposit when
14 the company's LLR is under one.

15 **Q.** Thank you. And so today if I refer to the
16 Act, you'll understand I'm referring to The
17 Oil and Gas Conservation Act and its
18 regulations. So you've advised me that your
19 role is to oversee the LLR rating. Does that
20 involve any engineering?

21 **A.** No, it's -- well, no, it's all done based on
22 the PNG 25 Directive, which gives out the
23 calculations for how we determine what the
24 deemed asset value and the deemed liability
25 values will be for those particular licences.

1 regulations.

2 **Q.** You always acted in the accordance with the
3 professional engineers' code of conduct?

4 **A.** Yes.

5 **Q.** And have you ever advised your employer, the
6 Ministry, that its actions were contrary to
7 the best interest of the environment in the
8 Bow River case?

9 MR. ROSE: Sorry to interrupt here.

10 And this is kind of where this is going, so
11 and we did mention this before, and I just
12 want to put it on the record, you know,
13 pursuant to jurisprudence, mainly Cimmer v.
14 Lunemann; Wallace v. Canadian National
15 Railway, the questioning confined to the
16 credibility and fact within affiant's
17 knowledge which is relevant to the
18 determination on the primary motion.

19 The primary motion
20 application is the distribution and discharge
21 order that the receiver was seeking. That's
22 the primary motion. While the information
23 that you are requesting is certainly within
24 Ms. Dominique's knowledge, it's not relevant
25 to the distribution and discharge order.

1 appreciate that. Are you going to put on the
2 record then that you will not be relying upon
3 the affidavit of Candy Dominique in any other
4 proceedings going forward?

5 MR. ROSE: No, I will not say that.

6 The purpose of the affidavit was in support
7 of the distribution and discharge order,
8 which was granted, so at this point,
9 presumably we won't need to rely on it,
10 because that has been granted with the one
11 caveat of the issue of priority.

12 And, with respect, we
13 probably will not be relying on that, because
14 Ms. Dominique's affidavit does not speak to
15 the issue of priority, and Ms. Dominique is
16 not a lawyer, and that's why she hires
17 outside counsel, so they can argue the issue
18 of priority, which we will at some point get
19 to.

20 MR. GREGORY: Well, respectfully, in
21 the documentation, Ms. Dominique did address
22 the issue of priority, but we'll get to
23 that --

24 MR. ROSE: Which documentation are
25 you referring to? There was no exhibits to

1 Ms. Dominique's affidavit.

2 MR. GREGORY: Well, in the orphan
3 deeming summary, which she has signed, there
4 is an indication of her evaluation of the
5 priority situation.

6 MR. ROSE: And that's not an exhibit
7 to do with Ms. Dominique's affidavit, the
8 affidavit which was made for the purpose of
9 supporting the application by the receiver
10 for distribution of proceeds order, which was
11 granted.

12 MR. GREGORY: So do I have an objection
13 to the question or not?

14 MR. ROSE: I'm just wanting to put
15 it on the record that, like I said, it's our
16 view that the scope of questioning in this
17 cross-examination ought to be very narrow.
18 We're willing to go beyond that to avoid an
19 application, but you will be receiving
20 objections if we're going down scopes and
21 talking about, you know, Ms. Dominique's
22 professional credibility or the Ministry's
23 conduct or what have you, none of which has
24 to do with the main application provided by
25 the receiver or the affidavit that was filed

1 in support of that application. So there is
2 no objection. I'm putting that on the
3 record, but, just so you know.

4 **Q.** So I think my question was, have you ever
5 advised your employer, the Ministry, that its
6 actions in the Bow River case were contrary
7 to the best interests of the environment?

8 **A.** No.

9 **Q.** And prior to March 29th, 2021, to your
10 knowledge, was Bow River in contravention of
11 any of the regulatory requirements in the
12 Act?

13 **A.** The ones that I administered, no, which is
14 115 to 117.

15 **Q.** And your role then with the issue of Bow
16 River and Sections 115 to 117, you're saying
17 that Bow River was not in breach prior to
18 March 29th, 2021, of the LLR ratio?

19 **A.** Right.

20 **Q.** Did you advise the Ministry to delay in
21 taking any enforcement steps as against Bow
22 River?

23 **A.** No.

24 **Q.** Were you involved with Bow River since
25 June 1st, 2020?

1 **A.** Since the CCAA?

2 **Q.** Yes, were you the liability regulations
3 manager on June 1st, 2020?

4 **A.** Yes.

5 **Q.** And you have quoted in your affidavit the Act
6 and its regulations, or you've made reference
7 to it, correct?

8 **A.** Correct.

9 **Q.** And that's because the Act and its
10 regulations are part of your job?

11 **A.** Correct.

12 **Q.** And as part of your job, you will also be
13 familiar with the Grant Thornton and Orphan
14 Well case known as Redwater out of Alberta.

15 **A.** I have some understanding of that case, yes.

16 **Q.** I don't want you to breach solicitor-client
17 privilege, but your understanding of that
18 case, does it come from any places other than
19 from legal counsel?

20 **A.** It comes from speaking with my director.

21 **Q.** And have you spoken with your director about
22 the Redwater case in respect to the Bow River
23 matter?

24 **A.** Prior to the receivership, yes.

25 **Q.** And isn't it correct that the Ministry took

1 the steps of appointing a receiver in order
2 to reverse the priority otherwise provided
3 for in the CCAA proceedings?

4 **A.** That was one of the reasons.

5 **Q.** You'll be familiar from the Act that the
6 Minister can complete any work to abandon
7 wells. Has the Minister completed or
8 commenced any steps to abandon any of Bow
9 River wells?

10 **A.** No.

11 **Q.** Has the Ministry taken any steps to --

12 MR. ROSE: That has nothing -- the
13 affidavit does not speak to any of that. If
14 you're going to be -- this is
15 cross-examination on her affidavit, not what
16 the Ministry has done post-affidavit,
17 because, again, the affidavit was filed in
18 support of the application for distribution
19 and discharge order.

20 MR. GREGORY: Mr. Rose, I anticipate
21 that you'll be arguing in favour of the
22 Redwater case, and you'll be familiar that
23 the Redwater case suggests that there is a
24 regulatory duty for this Ministry, and that
25 regulatory duty is what gives it its priority

1 that we were just asking questions about. So
2 my questions then are directly relevant to
3 the priority issue about the Ministry's
4 performance or non-performance of its
5 regulatory duty.

6 MR. ROSE: And I understand that,
7 that's why I did cite the two -- the Wallace
8 case and to say that your questioning is
9 confined to knowledge which is relevant to
10 the determination of the primary motion, the
11 primary motion being application for a
12 distribution and discharge order, which was
13 granted. It has nothing to do with priority.
14 You asked about Redwater. She said she has
15 an understanding of it, and that's that.

16 MR. GREGORY: You'll understand from
17 the case law and you've argued it in court
18 before that there is an issue about whether
19 the Ministry's claim for priority for
20 distribution is a claim provable in
21 bankruptcy or not, so my questions then are
22 directed at whether or not the Ministry's
23 claim is a claim provable in bankruptcy. So
24 the question that I didn't get out of mouth
25 before you objected, I'll put on the record,

1 and then you can object or not.

2 **Q.** My question was, has the Minister taken any
3 steps to evaluate the condition of any of the
4 Bow River wells?

5 MR. ROSE: And I'm just going to --
6 so you can answer that question. I'm just
7 saying -- and I think here is where the
8 objections are going to be starting,
9 Mr. Gregory because that has nothing to do
10 with what's in the affidavit of
11 Ms. Dominique.

12 MR. GREGORY: Mr. Rose, either put an
13 objection on the record or let me ask my
14 questions.

15 MR. ROSE: Objection. Irrelevant.

16 **Q.** Ms. Dominique, Bow River wasn't
17 the 100 percent working interest in all of
18 its wells, correct?

19 **A.** Correct.

20 **Q.** Typically it seems to have ranged from 65 to
21 75 percent, generally speaking; is that
22 correct?

23 **A.** I'm -- I don't have that information in front
24 of me, so I can't comment, but they were
25 not -- they were more than 50 on some of the

1 wells.

2 Q. And you'll be familiar from the Act that the
3 Ministry has the power to seek recovery of
4 orphan well fund obligations from other
5 working interests, correct?

6 A. Yes, where they have the ability to pay,
7 correct.

8 Q. Has the Ministry taken any steps to seek
9 recovery for any orphan well funds from
10 parties other than Bow River for Bow River's
11 obligations?

12 A. That will occur after this receivership is
13 finished. Yes, we have already been in
14 consultation with them.

15 Q. Have you made any demand for payment?

16 A. Not yet. We have to wait for receivership to
17 end.

18 Q. Why do you have to wait for --

19 MR. ROSE: Objection.

20 Q. -- the receivership --

21 MR. ROSE: Again, this --

22 MR. GREGORY: Let me put the question
23 on the record, and then you can object.

24 Q. Why do you need to delay until the
25 receivership is over in order to take

1 enforcement steps?

2 MR. ROSE: Objection.

3 MR. GREGORY: Basis of the objection.

4 MR. ROSE: Basis of the objection is
5 because it has nothing to do with
6 Ms. Dominique's affidavit which was filed in
7 support of the distribution and discharge
8 order, which was granted.

9 Q. The Ministry has the power to seek orphan
10 well fund obligations that -- of Bow River
11 from directors of Bow River, correct?

12 A. Correct.

13 Q. Has the Ministry taken any steps to enforce
14 or seek payment from those directors?

15 MR. ROSE: Objection, again for the
16 same reason. That has nothing -- that speaks
17 nothing to what is provided in
18 Ms. Dominique's affidavit, which was filed in
19 support of the primary motion which was
20 for -- put forward by the receiver for a
21 distribution and discharge order.

22 Q. At paragraph 3 of your affidavit, you
23 indicate that no security deposit was taken
24 from Bow River. I take it that at no time
25 has Bow River provided any security?

1 **A.** Correct.

2 **Q.** And I understand from that paragraph it's
3 because its LLR ratio was always greater than
4 one?

5 **A.** Correct.

6 **Q.** Now, in paragraph 3, you use the reference to
7 "at the time that it became insolvent." What
8 time are you referring to there?

9 **A.** We received a letter from legal counsel dated
10 October 15th, 2020, representing Bow River,
11 that as of October 29th, the company, the
12 officers, and directors would resign, the
13 employees and contractors would be
14 terminated, and the operation of Bow River
15 would cease.

16 **Q.** So that was your understanding that that was
17 the date of then insolvency?

18 **A.** That is their date of they are no longer
19 operating or have the financial means to
20 continue.

21 **Q.** What do you mean by the word "insolvent" in
22 paragraph 3?

23 **A.** For us it means that the company is not --
24 does not have the financial means to carry
25 out their obligation to abandon and reclaim

1 the wells.

2 Q. And when the company was ordered into CCAA in
3 June of 2020, did you consider whether the
4 company had the financial means to fulfill
5 its obligations?

6 MR. ROSE: Objection. Nothing in
7 Ms. Dominique's affidavit has made reference
8 to the CCAA proceedings which had concluded
9 by -- prior to the swearing of this
10 affidavit. The affidavit was only filed in
11 support of the receiver's motion seeking an
12 order for a distribution and discharge order,
13 which was granted.

14 Q. In paragraph 4 of your affidavit, you
15 described the Orphan Fund. Do you have that
16 paragraph in front of you?

17 A. Yeah, I do.

18 Q. You have the authority to request payment for
19 the Orphan Fund for abandonment and
20 reclamation?

21 A. Yes.

22 Q. Have you or the Ministry requisitioned funds
23 from the Orphan Fund in order to abandon,
24 reclaim, study, or otherwise address the
25 Bow River wells?

1 MR. ROSE: Objection. Nothing in
2 the affidavit speaks to that matter. The
3 affidavit was filed in support of the
4 receiver's application for a distribution and
5 discharge order, which was granted.

6 MR. GREGORY: Again, Mr. Rose, your
7 objections are trying to avoid the issue
8 about a claim provable in bankruptcy, and the
9 claim provable in bankruptcy is the question
10 of whether the Ministry has spent any monies
11 or not.

12 Q. So has the Ministry spent any monies on the
13 Bow River wells to today?

14 MR. ROSE: Objection. That's what
15 has occurred post-execution of this
16 affidavit. The affidavit was filed in
17 support of the receiver's application for a
18 distribution and discharge order, which was
19 granted.

20 MR. GREGORY: Well, Mr. Rose, are you
21 going to put on the record then and waive any
22 arguments in respect to priority for any
23 actions that occurred after the vesting order
24 on March 29th, 2021?

25 MR. ROSE: Absolutely not,

1 Mr. Gregory. This is a cross-examination on
2 Ms. Candy Dominique's affidavit, which was
3 filed in support of the primary motion which
4 is an application seeking an order for
5 distribution and discharge, which was
6 granted.

7 Q. Ms. Dominique, under paragraph 5, you
8 indicate that Bow River was deemed an orphan.
9 The Ministry has done nothing about it since
10 that date, correct?

11 MR. ROSE: Objection. For the same
12 reasons I was saying before, this affidavit
13 was executed for the purpose of the
14 receiver's application seeking a distribution
15 and discharge order, which was granted.
16 You'll see within the affidavit, it says what
17 the Ministry does do. It speaks nothing to
18 what the Ministry has done since the
19 affidavit was executed.

20 MR. GREGORY: Again, I anticipate
21 you'll be asserting the regulatory duty of
22 the Ministry under the Redwater case to seek
23 that priority, and so now you're refusing to
24 answer questions on the performance of that
25 regulatory duty.

1 MR. ROSE: Well, Mr. Gregory, I
2 anticipate you will be making an application
3 with respect to priority, and at that time,
4 we will file our own affidavits with respect
5 to that issue, and it may be Ms. Dominique or
6 somebody else within the Ministry that will
7 make that affidavit and that evidence, but
8 for the purposes of this cross-examination,
9 this affidavit has to do with the primary
10 motion that was brought forth by the receiver
11 for the distribution and discharge order,
12 which was granted.

13 MR. GREGORY: We have made that
14 application. It was adjourned for reasons,
15 so that application is before the courts.

16 Q. Let's move on. Paragraph 5, Ms. Dominique.
17 In paragraph 5 you indicate there was a total
18 associated liability of \$26,307,575 under the
19 LLR program. Do you see that?

20 A. Yes.

21 Q. On what document or evidence did you rely
22 upon in swearing your affidavit to provide
23 that number?

24 A. That is part of our Licensee Liability
25 Inventory Report that we have for the

1 company. So what it does is it's looking at
2 the PNG025 calculations or deemed assets and
3 liabilities under the program, and it looks
4 at every well that that licensee holds a
5 licence to, and it calculates the asset value
6 and liability, abandonment and reclamation
7 liabilities, related to those particular
8 licences. The total of those liability
9 values becomes this 26 million that you're
10 seeing.

11 **Q.** And so you've referred to a licensee
12 liability inventory report, I think dated
13 October 19th, 2020, that you relied upon in
14 part; is that correct?

15 **A.** (NO AUDIBLE RESPONSE).

16 **Q.** And you also relied upon an orphan deeming
17 summary that referenced the LLI report, and
18 that orphan deeming summary dated
19 October 23rd, 2020, correct?

20 **A.** Correct.

21 MR. GREGORY: I'd like to mark the
22 orphan deeming summary dated October 23rd,
23 2020, as the first exhibit.

24 EXHIBIT A:

25 ORPHAN DEEMING SUMMARY DATED OCTOBER 23,

1 2020, 3 PAGES

2 MR. GREGORY: And the Licensee

3 Liability Inventory (LLI) Report as the first
4 and second exhibits today, please.

5 EXHIBIT B:

6 LICENSEE LIABILITY INVENTORY (LLI)

7 REPORT, 8 PAGES

8 Q. Do you have a copy of the orphan deeming
9 summary in front of you?

10 A. Yes.

11 Q. And it appears that that document was signed
12 on page 3 by yourself and also by Megan
13 McGillivray, correct?

14 A. Yes.

15 Q. Did you prepare this document?

16 A. I did not.

17 Q. What does your signature denote?

18 A. That I am moving it forward now to the fund
19 advisory who will review it, that I've
20 reviewed it.

21 Q. And so this was a review and recommendation
22 to the fund advisory?

23 A. Yes.

24 Q. And I won't spend a lot of time on this
25 summary, but if we just looked at the first

1 page of it, towards the bottom, there is a
2 notation, "Total security held by the
3 Ministry, zero dollars."

4 **A.** Correct.

5 **Q.** And so that's zero dollars of security
6 towards Bow River's orphan well fund
7 obligations?

8 **A.** Correct.

9 **Q.** And over on page 2, there is a reference to
10 concerns or conditions that were not in the
11 best interest of the Orphan Fund, and there
12 is a list of three. One of those conditions
13 was that sale proceeds from CCAA were to go
14 toward municipal taxes, not into the orphan
15 fund. Do you see that in the summary?

16 **A.** Yes.

17 **Q.** On what document or basis did the Ministry
18 reach that conclusion?

19 **A.** That was one of the clauses presented to us
20 in the CCAA document that we received.

21 **Q.** And maybe more specifically, the CCAA court
22 orders?

23 **A.** Correct.

24 **Q.** Thank you. And on page 2, towards the bottom
25 there is a list of outstanding debt. Do you

1 see that?

2 **A.** Correct, yeah.

3 **Q.** Under Ministry of Energy and Resources, there
4 is a debt listed of \$11,855.09 for a 2020
5 Orphan Fund levy. Do you see that entry?

6 **A.** Yes.

7 **Q.** And so that's a Bow River debt obligation in
8 that amount?

9 **A.** Correct.

10 **Q.** This document is dated October 23rd, 2020.
11 Do you know when that particular Orphan Fund
12 levy obligation arose? Was it on
13 October 23rd, 2020, or prior?

14 **A.** No, the Orphan Fund levy is issued -- it's
15 supposed to be on May 1st of every year.
16 It's an annual levy to the fund. It's
17 separate from the security deposit invoices.
18 It's completely different, and then I'd have
19 to check the timing on that because there was
20 a year we had a glitch, and we had to issue
21 it later, but typically May 1st of every
22 year.

23 **Q.** And then towards the bottom of this topic of
24 outstanding debt, there is a listing of
25 municipal taxes. Do you see that?

1 **A.** Yes.

2 **Q.** And do you see "Eye Hill (R.M. 382)"? It
3 indicates, "No arrears that the Ministry is
4 aware of." Do you see that entry?

5 **A.** Correct.

6 **Q.** Did the Ministry or yourself take any steps
7 to contact Eye Hill to see if there were any
8 arrears?

9 **A.** Yes, that's part of our deeming package
10 process. We send an e-mail to all R.M.s. If
11 they respond in time, we add, so you'll see
12 that Loon Lake responded with an arrears, and
13 that's why it's in here, and there are no
14 others.

15 **Q.** Thank you. You would agree with me that your
16 role and responsibility under Sections 115 to
17 117 is a financial goal?

18 **A.** In part it's financial.

19 **Q.** What part of it isn't financial?

20 **A.** Environmental obligation to abandon and
21 reclaim sites to ensure there is no
22 contamination, at the end of the day, those
23 companies that were abandoning under the
24 orphan program where the licensee is
25 insolvent or doesn't have financial means.

1 Q. So the financial goal is to have monies to be
2 able do those environmental things?

3 A. To carry out the abandonment and reclamation
4 work, yes.

5 Q. In the orphan deeming summary on page 3, the
6 very last paragraph, there is an indication
7 that: (As read)

8 ...we are planning to deem the company
9 prior, so that receivership expenses
10 come out of the Orphan Fund.

11 I'm just taking the end of the sentence. Do
12 you see that?

13 A. Yeah.

14 Q. Were any receivership expenses taken from the
15 Orphan Fund?

16 A. They have not been yet because we are still
17 waiting for this to finalize and be sent a
18 bill.

19 Q. By -- from who?

20 A. From BDO, who is the receiver.

21 MR. GREGORY: I'm going to just take a
22 short break there. I'm almost concluded.

23 MR. ROSE: Absolutely.

24 (Recessed at 10:39 a.m.)

25 (Reconvened at 10:53 a.m.)

1 MR. ROSE: Mr. Gregory, if I could
2 just say one thing. I know you had some
3 questions about -- that I did object to, so
4 that would be just for the reasons stated,
5 that they had nothing really to do with the
6 affidavit and why the affidavit was made.

7 Just speaking with
8 Ms. Dominique, they have really nothing to
9 hide, so if you want to ask those questions
10 that I did object to, you can go ahead and do
11 so, and they are inclined to share that
12 information. We also just want to avoid
13 further application and (INDISCERNIBLE),
14 so -- and, again, this is public knowledge.
15 So...

16 MR. GREGORY: Thank you for that. I
17 appreciate that courtesy. It's problematic
18 for me now to go back and look to the
19 objections and the questions, so it's going
20 to take me a moment.

21 Q. Just to finish with where my train of
22 questioning was going to go next, was the
23 receiver provided a second report on
24 June 24th, 2021, and as Appendix A to that
25 report, it attached a minister's order dated

1 March 31st, 2021. You're familiar with that
2 minister's order?

3 **A.** Yeah, I have it in front of me.

4 **Q.** Thank you. In the Bow River case, were there
5 any other minister's orders issued other than
6 this one?

7 **A.** No.

8 **Q.** And did the Ministry -- sorry, did Bow River
9 comply with that minister's order?

10 **A.** This one here?

11 **Q.** Yes.

12 **A.** No.

13 **Q.** And so did the Ministry take over the
14 Bow River wells?

15 **A.** We have taken over the residual that did not
16 get transferred under the receivership.
17 They're now in the orphan fund.

18 **Q.** Is that -- that's an amount of money?

19 **A.** That's -- no, there is no money. It's just a
20 list of wells that were not transferred as
21 part of the receivership marketing and sales
22 process, so anything left, which I think left
23 us with 688 wells and 22 facilities. An
24 estimate of liability to clean up those, to
25 abandon and reclaim them, those licences have

1 now come to the Orphan Fund for us to
2 schedule into our work to carry out the
3 abandonment and reclamations.

4 **Q.** So when you use the word residual, you meant
5 the residual wells, not --

6 **A.** The residual wells, not money.

7 **Q.** Thank you. Because in this, you'll know that
8 the receiver was using the word residual in
9 terms of dollars.

10 **A.** Okay. Yes. No, I was talking strictly the
11 licences.

12 **Q.** Has the Minister taken any steps to evaluate
13 any of these residual wells?

14 **A.** Evaluate them in what sense, to abandon and
15 reclaim them?

16 **Q.** Obtain pictures of them, obtain studies of
17 them, assess what's needed, get quotations
18 for the work.

19 **A.** So what's happened so far, Veracity was hired
20 under -- the receiver/manager hired them to
21 look after all the sites during the
22 receivership. So what's happened since that
23 when they discharged the wells to us to the
24 Orphan Fund, our group had a consultation
25 with them to see what the sites were left at.

1 They've left the sites -- Veracity left them
2 as a suspended state, so there is no issues
3 with contamination risk or spills or anything
4 like that happening.

5 Since that time, after
6 reviewing the information, our orphan group
7 has actually gone out and visited those sites
8 to see and just confirm that they're in a
9 suspended state right now until they can be
10 worked into our Orphan Fund Schedule to
11 abandon.

12 **Q.** And you describe something called a suspended
13 state. What does that mean?

14 **A.** It means that the wells are -- I'm not out in
15 the field, so I can't speak completely to
16 this, but basically that they're not
17 operating. They're shut down, so there is no
18 risk of gas migration, or the tanks have been
19 emptied, so there is nothing there that will
20 cause a risk of spill or a leak or a break in
21 the line or anything like that.

22 **Q.** Well, when we talk about wells, we're talking
23 about bores into the ground, correct?

24 **A.** Correct.

25 **Q.** And is it not part of the orphan well danger

1 that unless wells are properly abandoned,
2 that subsurface migration of hydrocarbons
3 into soils or into waterways or indeed up
4 into the air can occur?

5 **A.** The wells themselves have well heads on them
6 that they lock, seal. I'm -- I don't go out
7 there and do this, but they do something with
8 that, pressure test it to make sure that
9 there is no gas migration. Nothing is
10 happening. Nothing is moving at that time.

11 **Q.** So you indicated the orphan group visited the
12 sites. Did they hire any consultants to go
13 with them?

14 **A.** Not at this point. We -- they first do an
15 assessment as to what's out there and what
16 they're going to need in the future.

17 **Q.** Just -- the orphan group is an orphan group
18 within the Ministry, correct?

19 **A.** Correct, in my liability management branch.

20 **Q.** So part of the objections were in regards to
21 my questions on seeking collection from
22 others, from the directors, for example. Has
23 the Ministry sought collection of the orphan
24 well fund obligation to Bow River from its
25 directors?

1 **A.** M-hm.

2 **Q.** And you indicated that the Ministry has been
3 in consultation with the working interest
4 partner, correct?

5 **A.** Correct.

6 **Q.** And I think the working interest partner is
7 Bonavista, it appears.

8 **A.** Correct.

9 **Q.** And in the deeming summary on page 2, there
10 is a reference to Bonavista, it appears.

11 **A.** Correct.

12 **Q.** And in the deeming summary on page 2, there
13 is a reference to Bonavista, Bonavista Energy
14 Corporation appears to be its full name.
15 There is an indication that it's a viable
16 WIP. What does "WIP" stand for?

17 **A.** Working interest participant.

18 **Q.** "Bonavista is a viable WIP in several wells
19 and facilities." How did you come to that
20 conclusion?

21 **A.** They actually disclosed and came to us, as in
22 the Ministry.

23 **Q.** And what did they disclose?

24 **A.** Well, that they were the WIP in these wells.

25 **Q.** In the residual wells?

1 **A.** When we began discussions with them, they
2 actually came during CCAA (INDISCERNIBLE) to
3 us and disclosed that they were.

4 **Q.** So have they paid any monies to the Ministry?

5 **A.** No yet.

6 **Q.** Has the Ministry made any demand of them?

7 **A.** That's not how the orphan process works.
8 Typically, once we've deemed them an orphan
9 and we're moving towards abandonment and
10 reclamation and we've now established the
11 list of wells that need to be abandoned and
12 reclaimed under the orphan program, our next
13 step is to work with them.

14 Whether -- typically what
15 we would do is make the WIP abandon. We
16 would issue an order to them, make them
17 abandon and reclaim the wells, and then we
18 would pay out of the orphan fund to reimburse
19 the cost that the defunct licensee's portion
20 of -- in all of those wells.

21 However, so we haven't --
22 we haven't done that discussion yet because
23 we are still trying to finalize our list of
24 wells and then whether Bonavista has the
25 ability to go out and abandon the 500 and

1 some wells, plus, that are left there that
2 need to be taken care of if they had that
3 capacity, or if they want us to do it, and
4 then we will go and take care of that and
5 charge them for their portion in the wells.

6 **Q.** And the deemed liability, when I look at the
7 LLI report, there appears to be amounts
8 listed per well or per facility, correct?

9 **A.** Right.

10 **Q.** And do you know, how does that -- how is that
11 amount arrived at?

12 **A.** That is all in the PNG Directive 025. It's
13 available online. It tells you exactly what
14 goes into each calculation, because there's
15 an abandonment calculation, and there's a
16 reclamation calculation --

17 **Q.** You would agree with me --

18 **A.** -- for liability. Yeah.

19 **Q.** You would agree with me, it's an estimate?

20 **A.** Yes.

21 **Q.** In October of 2020, what was the range of
22 deemed assets of Bow River?

23 **A.** Is that from my -- so October 19th, I have on
24 my orphan deeming summary there, it says that
25 the total abandonment or the total

1 abandonment and reclamation liability deemed
2 for the wells was 22 million and change, and
3 the facilities was 3.7 million, so a total of
4 26 million, 26,307,575. That's in
5 paragraph 5 of my affidavit.

6 **Q.** Understood. That's the liability side. What
7 I was asking about was the deemed asset side.

8 **A.** Oh, I do not have that because that is not --
9 actually, that would have -- this will -- it
10 will work -- on page 3 of the orphan deeming
11 summary, the total deemed asset value was
12 \$27,031,198.03. So at the time, their LLR
13 value was 1.01 when we did this assessment.

14 **Q.** Deemed asset value of 27 million, and you'll
15 understand that the receiver has reported out
16 in a statement of receipts and disbursements
17 that it appears that there is 1.3 million
18 actual proceeds from the Bow River vesting
19 order, correct?

20 **A.** I don't have that document, so I can't really
21 comment as to what the receiver put into
22 there. Actually, I'm not sure where you're
23 seeing this.

24 **Q.** Well, in the statement of receipts and
25 disbursements, it appears that the cash on

1 hand that the receiver has is \$1.294 million.

2 **A.** Okay.

3 **Q.** What I'm suggesting to you is, the receivers
4 at that point sold off all Bow River's
5 valuable assets, and that appears to be the
6 actual value of the net proceeds of the Bow
7 River estate --

8 **A.** Okay.

9 **Q.** -- subject to further accounting. I
10 understand there was --

11 **A.** Yeah, yeah. Yeah.

12 **Q.** -- other problems.

13 **A.** Correct.

14 **Q.** Can you help me understand how the deemed
15 assets of \$27,000,000 ended up at \$1.3
16 million, such a small fraction?

17 **A.** I cannot speak to that. That is their
18 document and not mine.

19 MR. GREGORY: Thanks for your time
20 today. Those are all my questions.

21 **A.** Thank you.

22 MR. ROSE: Thank you.

23 (Adjourned at 11:15 a.m.)
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CERTIFIED COURT REPORTER'S CERTIFICATE

I, Paula Clements, CSR, Certified Court Reporter,
hereby certify that the foregoing pages contain a
true and correct transcription of my stenograph
notes taken herein to the best of my knowledge,
skill and ability.



Paula Clements, CSR
CERTIFIED COURT REPORTER

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