COURT FILE NUMBER	**Q.B. 1705 of 2020**

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
IN BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE	**REGINA**
APPLICANTS	**R.M OF EYE HILL NO. 382**
RESPONDENTS	**HER MAJESTY THE QUEEN, SASKATCHEWAN (as represented by THE MINISTER OF ENERGY AND RESOURCES), BDO CANADA LIMITED in its capacity as Receiver of BOW RIVER ENERGY LTD.**

IN THE MATTER OF THE RECEIVERSHIP OF
BOW RIVER ENERGY LTD

BRIEF OF LAW ON BEHALF OF THE RESPONDENT, HER MAJESTY THE QUEEN (as represented by THE MINISTER OF ENERGY AND RESOURCES)

1500 – 1874 Scarth Street
Regina, Saskatchewan
S4P 4E9

To be heard: March 15, 2022

I. INTRODUCTION

1. The Ministry of Energy and Resources ("**MER**") submits this Brief of Law in response to the application of the Rural Municipality of Eye Hill No. 382 (the "**R.M.**") for adjudication of the issue of priority distribution of residual proceeds from the sale of the assets of Bow River Energy Ltd. ("**Bow River**").

2. The factual circumstances of the present case are almost identical to those that occurred in *Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5 [*Redwater*] and any minute differences in terms of steps taken by the MER in the present case to those taken by the Alberta Energy Regulator (the "**AER**") in *Redwater* cannot change the clear application of that case to the present priority dispute. The residual proceeds arising from the sale of the assets of Bow River in Saskatchewan must first be used as proposed by the *Receiver* to satisfy any environmental obligations of Bow River.

3. The R.M. attempts to distinguish the principle that is the crux of the Redwater case – namely, the polluter pays principle. Bow River has significant unaddressed abandonment and reclamation obligations ("**AROs**") that remain unsatisfied at the end of its receivership proceedings. The Supreme Court decision in *Redwater* was clear that any remaining proceeds from a sale of the assets of such entities must first be used to satisfy any outstanding AROs. This was exactly what the SCC directed to occur in *Redwater* and how the sales proceeds were used in that case.

4. The R.M. can have no better claim to any of the proceeds generated by Bow River during the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**CCAA**") proceedings than it had if the CCAA proceedings did not occur. The June 1, 2020 Initial Order granted in the CCAA proceedings (the "**Initial Order**") has expired and has not been renewed or extended. The Initial Order (unless specific provisions have been incorporated into the Receivership Order) cannot affect a subsequent receivership proceeding and as of the date of the appointment of the Receiver the R.M. did not have any better rights or claims to the funds held by Bow River. Those funds were paid to the Receiver to be dealt with in the receivership proceedings in the normal course and were not impressed with any trust or other obligations arising from the CCAA proceedings. This issue is a moot point and a red herring for the purposes of this application.

5. The MER takes the position that Bow River remains liable to satisfy its environmental obligations and that the proceeds from the sale of Bow River's assets must first be used to address those obligations. The MER asserts that the AROs totalling approximately $20,286,375.00 (the "**BR ARO estimated Amount**" plus any additional actual closure costs) must be satisfied prior to the claims of all other creditors, including all affected municipalities in Saskatchewan. The BR ARO Amount does not constitute a "claim" of the MER but is an ongoing public duty that must be satisfied by Bow River prior to any other claims of other creditors being addressed, including secured creditors. The MER submits that the R.M.'s claim to the proceeds from the CCAA period are outside of the scope of the present application and is a collateral attack on the Distribution and Discharge Order dated March 29, 2021 (the "**D&D Order**"). The funds claimed by the R.M. were paid to the Receiver in accordance with the clear terms of the Receivership Order and no objection was raised at that time (nor at the conclusions of the CCAA proceedings).

II. BACKGROUND

6. As a preliminary matter, although the Rural Municipality of Eye Hill No. 382 has unilaterally added the R.M. Senlack No. 411, the R.M. Grasslake No. 381 and R.M. Frenchman Butte No. 501 as applicants on this matter, in this Brief, the MER will refer to the applicant as being the R.M. in accordance with the direction of the Honourable M.R. McCreary that the R.M. was to be the applicant on the style of cause.[1]

7. Pursuant to the D&D Order, this Court approved the actions of the Receiver, BDO Canada Limited (the "**Receiver**") in its capacity as the receiver and manager over Bow River and further adjudged and declared that the Receiver completed its mandate with honesty and good faith.

8. Paragraph 12 of the D&D Order provided that any interested party could make an application to the court no later than April 28, 2021, for adjudication of the issue of priority distribution of residual proceeds. On April 27, 2021, the R.M. served an application seeking a declaration that Saskatchewan municipal taxes owed by Bow River in respect of the CCAA Period and the Receivership Period are payable in priority to the MER or any other party. As a preliminary matter, the R.M. also sought leave to cross-examine MER affiant Candy Dominique on her

[1] July 5 Fiat at para 6.

affidavit and sought an order directing the MER, as well as the Receiver, to provide accounting information.

9. The application was heard on June 28, 2021 before the Honourable M.R. McCreary. By fiat dated July 5, 2021 [July 5 Fiat], McCreary, J. made the following order:[2]

> (a) pursuant to Rule 6-13 of *The Queen's Bench Rules*, Candy Dominque, affiant for the MER, shall submit to cross-examination by Eye Hill on her Affidavit, sworn March 19, 2021;
>
> (b) the MER and/or Ms. Dominique shall provide to Eye Hill relevant accounting data that MER relied upon in making its determination that Bow River was an "orphan well" pursuant to the *Oil and Gas Regs*; and;
>
> (c) the Receiver shall provide to Eye Hill, as at October 20, 2020, a full accounting of the production income and liabilities paid from October 20, 2020 to the conclusion of the sales contemplated in the Orders of March 29, 2021 ("Receivership Period").

10. Justice McCreary directed that once disclosure was complete and the parties were ready to proceed, they should apply to the local registrar for a hearing date to determine the substantive issue regarding priority.[3]

11. Justice McCreary also held that for the purpose of the current proceedings, the R.M. was to be the applicant on the style of cause.[4]

12. The cross-examination of Candy Dominique was conducted on November 4, 2021. The procedural portions of the Order were fulfilled in November 2021. A hearing date to determine the substantive issue of priority was set for March 15, 2021.

III. FACTS

13. Bow River is an Alberta-based, privately-held junior energy producer engaged in the exploration, development and production of oil and natural gas.[5]

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[2] July 5 Fiat at para 7.
[3] July 5 Fiat at para 9.
[4] July 5 Fiat at para 6.
[5] Affidavit of Brad Wagner, sworn October 26, 2020 at para 7, filed in QBG 1705 of 2020.

14. On June 1, 2020, upon the application of Bow River, the Alberta Court of Queen's Bench granted an initial order under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA Initial Order**").[6] The CCAA Initial Order granted the imposition of an initial stay of proceedings against Bow River and its assets through to June 11, 2020, later extended to October 30, 2020. The CCAA Initial Order also appointed BDO Canada Limited as the Monitor of Bow River.

15. On July 24, 2020, the Alberta Court of Queen's Bench granted an Order approving the sales and investment solicitation process ("**SISP**") over Bow River's assets and engaged Sayer Energy Advisors as the sale advisor for the monitor ("**July 24 Order**").[7]

16. On October 13, 2020, the MER and Attorney General advised Bow River that the MER would not be able to support any potential transactions in respect of the Saskatchewan assets due to the unworkable conditions set out in the SISP.[8] The proposed purchase agreements would not have transferred all of Bow River's Saskatchewan licences, which would have resulted in the majority of licences being moved to the orphan well program.[9] The MER also opposed the proposed CCAA transfers because none of the proceeds would have been directed to address Bow River's end-of-life obligations..[10]

17. On October 15, 2020, counsel for Bow River advised the Alberta Orphan Well Association, the AER, Indian Oil and Gas Canada and the MER that it would cease operations in Alberta and Saskatchewan.[11] Bow River further advised that after October 29, 2020, it would no longer have the financial resources to maintain care and custody or its properties or comply with its legislative and regulatory obligations.[12]

18. On October 28, 2020, Justice McCreary of the Saskatchewan Court of Queen's Bench granted an Order (the "**Receivership Order**") appointing BDO Canada Limited as receiver and

[6] Exhibit "B" to the Affidavit of Brad Wagner, sworn October 26, 2020, filed in QBG 1705 of 2020.
[7] Exhibit "C" to the Affidavit of Brad Wagner, sworn October 26, 2020, filed in QBG 1705 of 2020.
[8] First Report of the BDO Canada Limited in its Capacity as Receiver and Manager of Bow River Energy Ltd, March 18, 2021 at para 14, filed in QBG 1705 of 2020 [First Report First Report at page 2.
[9] Affidavit of Candy Dominique, sworn February 18, 2022 at para 2, filed in QBG 1705 of 2020.
[10] Affidavit of Candy Dominique, sworn February 18, 2022 at para 2, filed in QBG 1705 of 2020.
[11] Exhibit "D" to the Affidavit of Brad Wagner, sworn October 26, 2020, filed in QBG 1705 of 2020.
[12] Exhibit "D" to the Affidavit of Brad Wagner, sworn October 26, 2020, filed in QBG 1705 of 2020.

manager of Bow's River's Saskatchewan assets pursuant to section 65(1) of *The Queen's Bench Act*. These assets consisted of approximately 764 well licences, 35 facility licences and 546 pipeline licences located primary in the Macklin and Pierceland regions.[13]

19. On March 18, 2021, the Receiver prepared the First Report and the Confidential Supplement in support of its pending application to the Court regarding approval of transactions and distribution. According to the First Report, in addition to the approximately $462,000.00 due to the MER from Bow River, there is also a total of approximately $26 million of abandonment and reclamation liabilities attributable to the Saskatchewan assets in accordance with the Licensee Liability Rating program.[14]

20. In the First Report, the Receiver recommended approval of the distribution of the Residual Proceeds to the MER to partially address Bow River's outstanding environmental regulatory obligations ("**end-of-life obligations**").[15]

21. The Sale Approval and Vesting Order regarding the sale agreement between the Receiver and Tallahasse Exploration Inc. was issued on March 29, 2021. The Sale Approval and Vesting Order regarding the sale agreement between the Receiver and Heartland Oil Corporation was also issued on March 29, 2021.

22. On March 29, 2021, the Saskatchewan Court of Queen's Bench ordered that the Receiver be discharged over all assets located in Saskatchewan that are not the subject of the Sale Approval and Vesting Orders issued the same day.

23. On March 31, 2021, the MER issued an Abandonment Order related to Bow River's end-of-life obligations on its remaining oil and gas assets (the "**Abandonment Order**").[16]

24. The R.M. has made an application pursuant to paragraph 12 of the D&D Order for an Order declaring that the outstanding municipal taxes have a priority over the MER.

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[13] First Report of the BDO Canada Limited in its Capacity as Receiver and Manager of Bow River Energy Ltd, March 18, 2021 at para 23, filed in QBG 1705 of 2020 [First Report].
[14] First Report at para 35.
[15] First Report at para 49.
[16] Abandonment Order, Appendix "A" to the Second Report of BDO Canada Limited, in its Capacity as Receiver and Manager of Bow River Energy Ltd. [Second Report].

25. This Brief of Law will establish that the BR ARO Amount must be satisfied prior to Bow River addressing any of the claims of any creditors, including all affected municipalities in Saskatchewan.

IV. ISSUES

26. The MER submits that the following issues require determination by this Honourable Court:

A. Can the R.M. claim priority over the CCAA Proceeds?

B. Is the MER asserting a provable claim in bankruptcy in regard to its end-of-life obligations?

C. Does the timing of the issuance of the Abandonment Order impact priority?

D. Do municipal taxes on resource production equipment create a lien pursuant to *The Municipalities Act*, SS 2005, c M-36.1 [*The Municipalities Act*]?

E. If a lien exists, does the Crown take priority over the R.M. pursuant to s. 320 of *The Municipalities Act?*

V. LAW & ARGUMENT

A. The R.M. cannot claim priority over the CCAA Proceeds

27. The R.M. incorrectly submits that the sum of $648,305.04 over which the Receiver was appointed on October 28, 2020 must be used to satisfy the end of life obligations prior to being paid to any creditors of Bow River. The R.M. fails to understand that proceeds from the CCAA have no bearing on the receivership or determination of any priority within the receivership.

28. The Affidavit of Janice Carbert includes correspondence between counsel for the R.M. and counsel for the Receiver, Keely Cameron, regarding the sum of $648,305.04. [17] In correspondence dated December 21, 2021, Ms. Cameron explains that Scotiabank forwarded the remaining cash in the amount of $2,091,306.57 in Bow River's bank accounts to the Receiver and that $648,305.04 was allocated to the Saskatchewan receivership on a pro rata basis based on the percentage of

[17] Affidavit of Janice Carbert, sworn February 11, 2022, filed in QBG 1705 of 2020.

production revenues generated from each province in the recent months preceding the receivership.[18]

29. The R.M. incorrectly submits that the sum of $648,305.04 over which the Receiver was appointed on October 28, 2020, which represented cash proceeds from the operations of Bow River during the CCAA period ("**CCAA Proceeds**"), is governed by the CCAA Orders which treated municipal taxes as cure costs which required payment in order to conclude sales agreements with purchasers. . The R.M. incorrectly asserts that the CCAA Proceeds were impressed with a trust to be dealt with in accordance with the CCAA Orders and therefore were not available to pay receivership fees and expenses.[19] The R.M. further argues that the Receivership Order does not undermine the priority provisions in the CCAA Orders, which is not in accordance with case law.

30. It is incorrect to state that the priority for municipal taxes was set out in the SISP.[20] A SISP cannot set the priority for anything and is not binding on anyone in respect of any legal statements as to priority. In an affidavit on behalf of the MER in support of the Receivership application, Brad Wagner explained that the SISP condition regarding priority was not in the best interest of the Orphan Well Fund.[21] The potential transfers presented to the MER for consideration during the SISP process would have resulted in Bow River's LLR being reduced from 1.03 to 0.1440, which was an unacceptable deemed asset to deemed liability ratio.[22] The MER was not authorized to consent or approve transactions that would create liabilities to the Orphan Well Fund and the people of Saskatchewan.[23] Partly due to this, the CCAA proceedings failed. In his affidavit, Brad Wagner stated that if the Receivership was granted, the MER would like to continue to engage in negotiations for purchase and sales agreements without a court ordered sales process.[24]

31. The Receivership Order did not include any priority for funds received from the CCAA proceedings and also did not incorporate any conditions set out in the SISP. On October 29, 2020, this Court granted an Order terminating the CCAA proceedings and discharging the Monitor.

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[18] Exhibit "C" to the Affidavit of Janice Carbert, sworn February 11, 2022, filed in QBG 1705 of 2020.
[19] Brief of Law of the Applicants at para 3.
[20] Affidavit of Brad Wagner at para 15.
[21] Affidavit of Brad Wagner at para 15.
[22] Affidavit of Brad Wagner at para 16.
[23] Affidavit of Brad Wagner at para 16.
[24] Affidavit of Brad Wagner at para 16.

32. The MER submits that the R.M. cannot now claim priority over the CCAA Proceeds. The MER submits that the R.M.'s argument should have been advanced during the CCAA proceedings or prior to appointment of the Receiver. No such submissions were made at that time and there is no provision that can retroactively apply to the effect of the Receivership Order.

33. Additionally, the R.M.'s claim concerning the CCAA proceedings is outside of the scope of the D&D Order. In the D&D Order, this Honourable Court approved the actions of the Receiver, BDO Canada Limited (the "**Receiver**") in its capacity as the receiver and manager over Bow River and further adjudged and declared that the Receiver completed its mandate with honesty and good faith.[25] The D&D Order provided that applications could be filed with the Court in regard to the distribution of residual proceeds:

> 12. Provided no application is filed with the Court on or before April 28, 2021 with respect to the distribution of Residual Proceeds ("**Distribution Application**"), the Receiver is authorized and directed to distribute the Residual Proceeds to Her Majesty the Queen, Saskatchewan, as represented by the Minister of Energy and Resources to be deposited into the Saskatchewan Oil and Gas Orphan Fund as partial satisfaction of the Debtor's outstanding environmental obligations. In the event a Distribution Application is filed, the Receiver shall hold on to the Residual Proceeds until further directed by the Court.
>
> Emphasis added

The D&D Order did not provide that any applications could be made regarding the CCAA Proceeds. Furthermore, in the July 5 Fiat, Justice McCreary confirmed that the D&D Order allowed applications in regard to the Residual Proceeds:

> [3] On March 29, 2021, I issued a distribution and discharge order which, among other things approved the actions of the Receiver in respect of Bow River. However, I allowed any interested party to make an application to the court for adjudication of the issue of priority distribution of residual proceeds, (as defined at paragraph 40 of the First Report of BDO Canada Limited in its Capacity as Receiver and Manger of Bow River Energy Ltd.)…
>
> (Emphasis added)

[25] D & D Order at para 13(a).

34. Paragraph 40 of the First Report states:

> 40. In light of the Receiver continuing operations during the Saskatchewan Proceedings, the Receiver anticipates that it will be several weeks following the closing of the Proposed Transactions until all operational invoices are received and a final accounting can be completed such that the amount available for distribution can be determined ("**Residual Proceeds**").
>
> (Emphasis in original)

35. Therefore, the R.M.'s claim regarding the CCAA Proceeds falls outside of the permissible applications under the D&D Order.

36. The MER also submits that the R.M.'s claim regarding the CCAA Proceeds constitutes a collateral attack on both the Receivership Order and the D&D Order and is therefore an abuse of process.

Collateral Attack

37. The doctrine of collateral attack prevents a second proceeding that challenges the enforceability of an order from an earlier proceeding. The principle of collateral attack makes an order pronounced by court having jurisdiction binding and conclusive and not susceptible to attack in subsequent proceedings except those provided by law for the express purpose of attacking it (*Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44 at para 20, [2001] 2 SCR 460; *Yolbolsum Canada Inc. v Golden Opportunities Fund Inc.*, 2019 SKQB 285 at para 30).

38. The MER submits that the R.M's claim over the CCAA Proceeds is a collateral attack of the D&D Order. For example, the R.M. argues that the CCAA Proceedings were impressed with a constructive trust. In *Sun Indalex Finance, LLC. v United Steelworkers*, 2013 SCC 6, [2013] 1 SCR 271 at para 228 [*Indalex*], the Supreme Court set out the four conditions which must be present before a remedial constructive trust may be ordered:

> (1) The defendant must been under an equitable obligation, that is, an obligation of this type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;

(2) The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff.

(3) The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties and;

(4) There must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case; e.g., the interests of intervening creditors must be protected.

(Emphasis added)

39. In light of the second element of the test, the R.M.'s claim for a constructive trust depends upon a finding of wrongdoing on the part of the Receiver in regard to the CCAA Proceeds. Such a finding would be a collateral attack on the D&D Order which approved the actions of the Receiver in its capacity as the receiver and manager over Bow River and adjudged and declared that the Receiver completed its mandate with honesty and good faith.[26]

Abuse of Process

40. The doctrine of abuse of process can be used to prevent the re-litigation of a claim that has already been determined by the court (*Bear v Merck Frosst Canada & Co*, 2011 SKCA 152 at paras 36-38, 345 DLR (4th) 153; *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 37, [2003] 3 SCR 77 [*CUPE*]. Allowing re-litigation to proceed violates the principles of finality, judicial economy, the integrity of the administration of justice and thereby constitutes an abuse of process (*Yolbolsum Canada Inc. v Golden Opportunities Fund Inc.*, 2019 SKQB 285 at para 53 [*Yolbolsum*]).

41. A party's delay in raising an issue is a consideration in an abuse of process analysis. In *Behn v Moulton Contracting Ltd.*, 2013 SCC 26, 2 SCR 227, the Crown had granted licences to a logging company to harvest timber on Fort Nelson First Nation. A number of individuals from the First Nation erected a camp blocking the logging company's access to logging sites. The logging company brought a tort action against the members of the First Nation. The community members raised a breach of the duty to consult and of treaty rights as a defence to the claim. The court below

[26] D & D Order at para 13(a).

held that individual members of an Aboriginal community did not have standing to assert collective rights. The Supreme Court of Canada concluded that raising a breach of the duty to consult and of treaty rights was an abuse of process. Neither the First Nation nor the community members had made any attempt to legally challenge the licences when the Crown granted them (at para 37). Lebel, J. reasoned that if the community members were of the view they had standing, they should have raised the issue at the appropriate time (at para 37).

42. Similarly, if the R.M. was of the view that it was entitled to the CCAA Proceeds, it should have raised such arguments at the appropriate time, namely during the CCAA Proceedings or at a minimum at the time the Receivership Order was granted and the CCAA proceedings terminated. It did not do so. The MER submits that the priority scheme set out in the CCAA Orders expired upon the termination of the CCAA proceedings and that priority scheme did not apply to any obligations of Bow River under the Initial Order. The requirements of the debtor company to comply with the terms of the Initial Order do not create "priority" provisions and are obligations of the debtor company. Any such obligations of Bow River in respect of the CCAA proceedings ended when the stay of proceedings expired and the CCAA proceedings were terminated in October and November of 2020.

43. Turning to caselaw, it is well established that priority of claims set out in a CCAA process end with those proceedings. In *Smoky River Coal Ltd. (Re)*, 2000 ABQB 621, [2000] 10 WWR 147 [*Smoky River*], a CCAA order created an express charge and priority over the debtor's assets in favour of post-petition trade creditors. After the attempted reorganization failed, several creditors applied for recognition as post-petition trade creditors. In considering the application, Lovecchio, J. discussed the relevant time frame for the charge:

> [30] The relief provided under the CCAA is temporary. A company may continue to operate under this umbrella as long as there is opportunity for successful reorganization. Once it becomes apparent that a reorganization cannot be achieved, the protective umbrella should be collapsed.

44. Justice Lovecchio held that the legal basis for the charge was the discretionary authority of the Court granted under the CCAA (at para 31). Lovecchio went on to find that, the protection of the charge only lasted as long as the CCAA proceedings:

> [33] The CCAA Proceedings were stayed on March 31, 2000 when the Interim Receiver was appointed under the BIA. This was done as it was clear that Smoky did not have any realistic hope of reorganization. In my view, this Order ended the CCAA Proceedings. It follows that the protection of the Charge must also end as the statutory basis for the exercise of the discretion is gone…

45. In *Montreal Trust Co. of Canada Ltd. v Smoky River Coal Ltd.*, 2001 ABCA 209, the Court of Appeal reversed some of Justice Lovecchio's findings regarding the eligibility criterion for a post-petition trade creditor, the Court did not disturb the above finding regarding the scope and duration of a CCAA Order.

46. Based on the finding in *Smoky River*, the priority of any claims set out in the CCAA Orders ended with the termination of the CCAA proceedings and the priority of any claims set out in the Receivership Order became the key starting point for any analysis of the claims of creditors.

47. In *Clearbeach and Forbes*, 2021 ONSC 5564 [*Clearbeach*], as part of the CCAA Plan of Arrangement, the Ontario Superior Court of Justice approved a reversed vesting order ("**RVO**") notwithstanding the objection of several municipalities. The applicant oil and gas companies owed an estimated $9 million in abandonment and reclamation costs. The proposed RVO included a release in favour of landowners upon whose property the oil and gas assets were situated with respect to any outstanding municipal tax liabilities in relation to those assets. A number of municipalities opposed the RVO on the basis that it would extinguish most of the outstanding tax liabilities.

48. The Court found that Clearbeach's obligations under the Ministry Inspector's Orders were not provable in bankruptcy and therefore needed to be addressed in priority to any secured and unsecured creditors (at para 27(g)). While the Court acknowledged the RVO would prejudice the municipalities, the Court concluded that the prejudice would be increased in the event of bankruptcy, as Clearbeach would have to pay its environmental obligations in priority in bankruptcy (at para 27(i)).

49. *Clearbeach* illustrates that the appropriate time for the R.M. to raise a claim for proceeds to be paid to it was from the CCAA Proceeds was during the CCAA proceedings. The Receivership Order, properly, did not establish a priority to municipal taxes. If the R.M. was of the view that it

had priority over the CCAA Proceeds, it should have raised an argument before the CCAA proceedings were terminated.

50. From a policy perspective, it would literally create chaos for any future receiver if it was appointed after a failed CCAA to try and sort through what obligations under the Initial Order were complied with by the debtor and which were not and then try to assign some sort of priority to those obligations within the receivership. The R.M. was served with all CCAA materials and had the right to make any submission it wanted in the CCAA proceedings to protect its position but chose not to do so. This was also spelled out in the March 18, 2021 First Report of the Receiver in support of those transactions and no party raised an objection to it. The R.M. effectively "waited in the weeds" until this was all completed to then raise its spurious priority argument.

51. In light of all of the above, the MER submits that paragraphs 38 – 58 of the Brief of the R.M. are irrelevant to the issues to be determined on this application and fall outside of the scope of permissible applications to this Court as set out at para 12 of the D&D Order.

52. Furthermore, even if the scope of the application were expanded to include adjudication regarding the CCAA Proceeds, the MER submits that the R.M. does not have any priority claim against the CCAA Proceeds that would differ from any other creditor of Bow River.

No Lien Against Funds of the Estate

53. The R.M. submits it has priority over the CCAA Proceeds by virtue of s. 320 of *The Municipalities Act*, which provides:

> 320(1) The taxes due on any property are
>
> (a) a lien against the property;
>
> (b) and are collectable by action or distraint in priority to every claim, privilege, lien or encumbrance, except that of the Crown.
>
> (Emphasis added)

54. Section 320 makes it clear that, without a judgment for the debt, any claim the R.M. may have is restricted to the property from which the tax obligation arose and would not extend to the funds or assets of the estate.

A Constructive Trust is Not Just in the Circumstances

55. As referenced above, the R.M. makes an alternative claim of resulting or constructive trust. In *Indalex*, the administrator of two employee pension plans, Indalex Limited, sought protection from its creditors under the CCAA. When Indalex obtained court approval to sell its business, the purchaser did not assume pension liabilities. The pension plan members claimed they had a constructive trust over the proceeds of the sale arising from Indalex's alleged breaches of fiduciary duty in the administration of the pension funds. The majority of the Supreme Court held that the imposition of a constructive trust would be an unjust response in all the circumstances:

> [240] A judicially ordered constructive trust, imposed long after the fact, is a remedy that tends to destabilize the certainty which is essential for commercial affairs and which is particularly important in financing a workout for an insolvent corporation. To impose a constructive trust in response to a breach of fiduciary duty to ensure for the plan beneficiaries some procedural protections.

56. Similarly, the imposition of a constructive trust so long after the CCAA proceedings were terminated would destabilize certainty in regard to CCAA proceedings. Moreover, the four conditions set out at paragraph 228 of *Indalex* have not been met, particularly the requirement that there be no factors which render the imposition of a constructive trust unjust in all the circumstances of the case. In this case, the imposition of a constructive trust would jeopardize the public duty of Bow River to satisfy its end-of-life obligations.

57. The R.M.'s claim to the CCAA Proceeds is outside of the permissible scope of this application, are moot, and are without merit.

B. The MER is not asserting a provable claim in bankruptcy in regard to its end-of-life obligations

58. In *Redwater*, the majority of the Supreme Court held that in order for an environmental obligation to be considered a claim provable in bankruptcy, the three requirements set out at para 26 of *Newfoundland and Labrador v AbitibiBowater Inc.*, 2012 SCC 67, [2012] 3 SCR 443 [*Abitibi*] must be met (the "***Abitibi* test**"). In *Redwater*, the Supreme Court set out the *Abitibi* test as follows: first, there must be a debt, liability or obligation to a creditor; second, the debt, liability or obligation must have arisen before the debtor becomes bankrupt; and third, it must be possible

to attach a monetary value to the debt, liability or obligation (at para 119). The Supreme Court clarified that third prong of the *Abitibi* test is generally called the "sufficient certainty" step and should focus on whether the regulator will ultimately perform the environmental work and assert a monetary claim for reimbursement (at para 121).

(a) The MER is not a creditor

59. Pursuant to *Redwater,* the Abandonment Order is only a claim provable in bankruptcy if the three prongs of the *Abitibi* test are met. The first branch of the *Abitibi* test is whether there is a debt, liability or obligation to a creditor.

60. The R.M. argues that the first prong of the *Abitibi* test is satisfied because there is an "Orphan Well Fund debt" set out in the Orphan Well Deeming Summary.[27] As explained in the Affidavit of Candy Dominique, sworn February 18, 2022 ("**Second Dominque Affidavit**"), the "Orphan Fund Levy" listed under Outstanding Debt in the Orphan Well Deeming Summary is separate and distinct from Bow River's end-of-life obligations.[28] In Saskatchewan, as in Alberta, orphan well funds are funded through an annual levy paid by licensees of wells and facilities.[29] The Orphan Fund levy is used to supplement the shortfall in the Orphan Well fund and allow the MER to carry out the environmental obligations of the existing orphaned and insolvent licensees.[30] Therefore, the "Orphan Well Fund debt" listed in the Orphan Well Deeming Summary does not refer to the end-of-life obligations of Bow River and consequently, does not factor into the *Abitibi* test analysis.

61. The R.M. also points to the reference to the MER's "claim for reimbursement" in the Second Dominique Affidavit as evidence that the MER is a creditor. As is made clear in the Second Dominique Affidavit, the claim for reimbursement is not a creditor claim but is public duty to satisfy "a regulatory obligation that goes to the core of the regulatory regime under the OGCA".

[27] Applicants' Brief of Law at para 65.
[28] Affidavit of Candy Dominique, sworn February 18, 2022 at para 10, filed in QBG 1705 of 2020 [Second Dominique Affidavit].
[29] Alberta OGCA, s. 73(2); Saskatchewan OGCA, s. 20.98(c); Saskatchewan OGCA Regulations, 2012, s. 119(1).
[30] Affidavit of Candy Dominique, sworn February 18, 2022 at para 10, filed in QBG 1705 of 2020

62. In *Redwater*, the Supreme Court held that the AER was enforcing end-of-life obligations in a *bona fide* regulatory capacity and was therefore not a creditor (at para 128). Chief Justice Wagner concluded that while the AER was not unable to obtain financial benefit, its ultimate goal was to have the environmental work actually performed and not to recover a debt or to pursue an oblique motive, as had occurred in *Abitibi*, where the evidence led to the conclusion that Newfoundland and Labrador sought a financial benefit from the remediation orders (at para 128).

63. Like the AER in *Redwater*, the MER is seeking to enforce Bow River's statutory end-of-life obligations with respect to its licensed wells, facilities, and pipeline segments in Saskatchewan. The MER is acting in a bona fide regulatory capacity. The MER's ultimate goal is to have the environmental and end-of-life obligations of Bow River satisfied for the benefit of third party landowners and the general public. In *Redwater*, Chief Justice Wagner emphasized that in enforcing end-of-life obligations, the AER is acting in the public interest:

> [122] …On a proper understanding of the "creditor" step, it is clear that the Regulator acted in the public interest and for the public good in issuing the Abandonment Orders and enforcing LMR requirements and that it is, therefore, not a creditor of Redwater. It is the public, not the Regulator or the General Revenue Fund, that is the beneficiary of those environmental obligations; the province does not stand to gain financially from them.

64. Chief Justice Wagner's comments about the AER apply equally to the MER. Subsection 17.01(b) of the Saskatchewan *OGCA* authorizes the MER to make orders for suspension, abandonment and reclamation "for the purposes of public safety or the safety of any person, for the protection of property or the environment or for any other prescribed purpose". The MER has a statutory obligation to protect the public by taking all measures to address Bow River's environmental obligations.[31]

65. In an affidavit sworn October 26, 2020, Brad Wagner, the Manager of Environment and Liability for the Petroleum Development Branch of Saskatchewan, stated that "it is imperative and in the interests of public safety that a receiver be appointed to ensure that Bow River's wells are properly operated, cared for and maintained and shut-in where necessary" (emphasis added). As in *Redwater*, the purpose of the Abandonment Order is to ensure the remediation work is done and

[31] Affidavit of Candy Dominique, sworn February 18, 2022 at para 5, filed in QBG 1705 of 2020.

not to seek a financial benefit. The orphan program is the only industry safeguard in Saskatchewan to address the abandonment and reclamation of sites left behind by insolvent licensees.[32] Without the orphan program, the responsibility of abandonment and reclamation work would fall to the Saskatchewan government, and ultimately to Saskatchewan taxpayers.

66. In *Abitibi*, the Minister of Environment had ordered AbitibiBowater to remediate five sites, three of which had been expropriated by Newfoundland and Labrador. The Supreme Court concluded that the province never intended Abitibi to perform the remediation work, but only sought a claim to be used as an offset in connection with AbitibiBowater's NAFTA claim (*Abitibi* at para 54).

67. In its Brief of Law, the R.M. incorrectly suggests that the facts in the Bow River Receivership are similar to those in *Abitibi* because the MER applied to appoint a Receiver in order for environmental obligations to take priority, and was therefore asserting regulatory power for financial advantage.[33] In support of its argument, the R.M. once again mistakenly conflates the 2020 Orphan fund levy debt with Bow River's outstanding end-of-life obligations.[34] As definitively determined in *Redwater*, a regulator seeking to have environmental work performed for the benefit of third-party landowners and the public at large is acting in a *bona fide* regulatory capacity and is not seeking a financial benefit (at para 128). Unlike in *Abitibi*, there is no colourable attempt by the MER to recover a debt, nor is there any ulterior motive. The MER is simply seeking to enforce Bow River's regulatory obligations under the OGCA in the same manner as the AER and the OWA in Redwater.

68. The MER submits that of the possible options available, issuing the Abandonment Order on March 31, 2021 was the most reasonable way to enforce Bow River's regulatory obligations. A less desirable option was to require the Receiver to sell all of Bow River's assets. The MER initially instructed the Receiver to pursue negotiations that Bow River had embarked upon with certain parties regarding its Saskatchewan assets.[35] However, the sales and investment solicitation

[32] Affidavit of Candy Dominique, sworn February 18, 2022 at para 5, filed in QBG 1705 of 2020.
[33] Brief of Law of the Applicants at para 81.
[34] Brief of Law of the Applicants at para 82.
[35] First Report of the Receiver, March 18, 2021 at para 27 ("First Report").

process during the CCAA Proceedings did not result in any *en bloc* offers for the Saskatchewan Assets.[36]

69. Alternatively, the MER could have required the Receiver to post security in order to improve the Licensee Liability Rating ("LLR") for the unsold assets pursuant to s. 15(1) of the *OGCA*. However, there were not enough funds to do so. In such circumstances, the most reasonable course of action was for the MER to assume care and custody of the unsold properties through the orphan program upon the discharge of the Receiver.

70. In *Redwater*, Chief Justice Wagner found that the failure to meet the first prong of the *Abitibi* test was sufficient to determine the Abandonment Order was not a provable claim in bankruptcy (at para 137). Therefore, once it is established that the regulator is not a creditor, it is not necessary to assess the second and third prongs of the *Abitibi* test. It is clear on the facts that the MER is not a creditor of Bow River with respect to its end-of-life obligations for the very same reasons the AER was not a creditor of Redwater. In enforcing compliance with Bow River's end-of-life obligations, the MER is acting in a *bona fide* regulatory capacity and not as a creditor. On this basis alone, the *Abitibi* test cannot be met, and consequently, the Abandonment Order is not a claim provable in bankruptcy.

(b) It is not sufficiently certain the abandonment and reclamation work will be carried out

71. The R.M. argues that the Bow River Receivership is distinguishable from the *Redwater* case because there is a real and sufficient certainty that the MER will perform the work and is seeking reimbursement, thus satisfying the first prong of the *Abitibi* test.[37] Respectfully, the R.M. has conflated the first and third prongs of the *Abitibi* test. The question of whether the regulator is a creditor is a separate and distinct inquiry from whether there is sufficient certainty the reclamation work will be performed.

[36] First Report at para 28.
[37] Brief of Law of the Applicants at para 73.

72. In *Redwater*, the question as to whether the abandonment order was a provable claim was disposed of when Chief Justice Wagner concluded the first prong of the *Abitibi* test had not been met:

> [139] Before the third step of the *Abitibi* test can even be reached, a regulator must already have been shown to be a creditor. I have concluded that, on the facts of this case, the Regulator is not a creditor of Redwater. However, for the purpose of explaining how I differ from the chambers judge on the "sufficiently certain" analysis, I will proceed as if the Regulator were, in fact, a creditor of Redwater in respect of the Abandonment Orders and LMR requirements…
>
> (Emphasis added)

73. Therefore, as discussed in the previous section of this Brief, once it is established that the regulator is not a creditor, it is not necessary to assess the second and third prongs of the *Abitibi* test. Nevertheless, the MER submits that the third prong of the *Abitibi* test is also not made out on the facts at hand.

74. For the sake of completeness, Chief Justice Wagner proceeded to address the third prong of the test and considered whether it was sufficiently certain that the environmental duty would ripen into a financial liability owed to the AER (at para 140). Chief Justice Wagner reasoned that the test would be satisfied if it was sufficiently certain that the regulator would enforce the obligation by performing the environmental work and seeking reimbursement (at para 140).

75. The R.M. maintains the differences between the Alberta and Saskatchewan regulatory regimes make the Bow River Receivership distinguishable from *Redwater*.[38] One of the only notable differences between the regulatory regimes of Alberta and Saskatchewan is that in Alberta the AER has delegated its statutory authority to abandon and reclaim orphan wells to the OWA. In Saskatchewan, the MER has a dual function as a creditor which collects the orphan levy and secondly, as a regulator which enforces the regulatory obligations of Bow River for the protection of the public. In Saskatchewan and Alberta, the abandonment and reclamation work are funded by the orphan fund. The MER submits that nothing significant turns on this distinction in regard to the "sufficiently certain" test. While Chief Justice Wagner noted the OWA's independent, non-

[38] Brief of the Appellants at para 77.

profit status, he declined to decide whether the *Abitibi* test always requires the environmental work be carried out by the organization itself (at para 147).

76. In *Redwater*, the third prong of the *Abitibi* test did not turn on the OWA's degree of independence from the AER, but whether it was sufficiently certain the OWA would perform the abandonments and advance a claim for reimbursement:

> [153]…In sum, the chambers judge erred in failing to consider whether the OWA can be treated as a regulator and in failing to appreciate that, even if it can, it is not sufficiently certain that the OWA will in fact perform the abandonments and advance a claim for reimbursement.
>
> (Emphasis added)

77. As demonstrated above, the key point is not whether the work would fall to the regulator to undertake, but rather whether it is sufficiently certain the work will in fact be performed. In *Redwater*, Chief Justice Wagner distinguished the facts from those in *Northstar Aerospace Inc., Re,* 2013 ONCA 600, 8 CBR (6th) 154, where the Ministry of the Environment had already undertaken remediation activities (at para 150). In contrast, Chief Justice Wagner noted that the OWA's scheduling of the work was uncertain due to the backlog of sites (at para 151).

78. The R.M. suggests that the following paragraph in the First Dominique Affidavit, establishes that it is sufficiently certain the abandonment and reclamation work will be carried out by the MER:[39]

> 7. After the receiver is discharged, the remaining Bow River wells and facilities will be scheduled for abandonment and reclamation work by the Minister and will be placed under the management of the Orphan Program with the expenses coming out of the Orphan Fund. The abandonment work will be completed as soon as reasonably possible.

79. However, the above paragraph must be read in conjunction with the next paragraph of the affidavit, which states:

[39] Affidavit of Candy Dominique, sworn March 19, 2021 at para 7, filed in QBG 1705 of 2020.

> 8. …After the receiver is discharged, the remaining Bow River wells and facilities will be scheduled for abandonment and reclamation work by the Minister to be scheduled for clean up based on risk and funding availability in the Orphan Fund.
>
> (Emphasis added)

80. In the Second Dominique Affidavit, Ms. Dominque stated that the timing of the abandonment and reclamation work is subject to constraints such as available service providers to carry out the work and available funds.[40] In its Brief of Law, the R.M. mistakenly states that the Second Dominique Affidavit estimates the work to be done in "one to two years".[41] In fact, the Second Dominque Affidavit states it will likely take "several years" to carry out the work. [42] As explained in the Second Dominique Affidavit, there are currently 95 orphaned licensees in Saskatchewan, with associated closure work costs of approximately $39 million.[43] However, as of January 31, 2022, the orphan fund only holds $5,304,351.00.[44] As of February 18, 2022, the orphan fund has approximately 500 wells in the queue for abandonment work.[45] Considering that the orphan program typically only has the capacity to abandon between 40 to 80 wells per fiscal year, it will likely take several years to carry out the work.[46] This timeline is similar to that in *Redwater*, where it was estimated that it would take approximately 10 years to "clear the backlog of orphans" (at para 151). Chief Justice Wagner determined that, given the 10 year timeline, it was difficult to predict anything with sufficient certainty (at para 152).

81. Therefore, due to the various constraints and scheduling timeline, as in *Redwater*, it is difficult to predict with sufficient certainty when the work will be performed (at para 152)..

82. The MER submits that the facts in *Redwater* align closely with those in the Bow River receivership. The relevant pieces of legislation in Alberta and Saskatchewan are very similar. In fact, the 2007 amendments to *The Oil and Gas Conservation Act*, RSS 1978, c O-2 [Saskatchewan *OGCA*] were proposed, in part, to harmonize with the Alberta legislative regime.[47] By including

[40] Affidavit of Candy Dominique, sworn February 18, 2022 at para 8, filed in QBG 1705 of 2020.
[41] Brief of Law of the Applicants at para 68.
[42] Affidavit of Candy Dominique, sworn February 18, 2022 at para 8, filed in QBG 1705 of 2020.
[43] Affidavit of Candy Dominique, sworn February 18, 2022 at para 10, filed in QBG 1705 of 2020.
[44] Affidavit of Candy Dominique, sworn February 18, 2022 at para 10, filed in QBG 1705 of 2020.
[45] Affidavit of Candy Dominique, sworn February 18, 2022 at para 8, filed in QBG 1705 of 2020.
[46] Affidavit of Candy Dominique, sworn February 18, 2022 at para 8, filed in QBG 1705 of 2020.
[47] Saskatchewan Legislative Assembly, Explanatory Notes to Bill No. 157, An Act to Amend *The Oil and Gas Conservation Act*.

a receiver-manager in the definition of a licensee, both regulatory regimes contemplate a licencee's regulatory obligations continuing to be met while it is the subject of insolvency proceedings.[48] Both regulatory regimes allow the regulator to designate wells, facilities and sites as orphans.[49] The funding schemes for the abandonment and rehabilitation of orphan wells are also similar, as both regulatory regimes establish of orphan well funds.[50] In both Alberta and Saskatchewan, the orphan well funds are funded through an annual levy paid by licensees of wells and facilities, calculated based on the estimated cost of abandoning and restoring orphan wells in a given fiscal year.[51] Due to the similarities in the facts and relevant legislation, the MER submits the *Redwater* analysis applies to the Bow River receivership.

C. The timing of the issuance of the Abandonment Orders does not impact the obligations of Bow River to satisfy its end of life obligations

83. The R.M. also argues that *Redwater* does not apply because Bow River's operating wells were transferred before the Abandonment Orders were issued. In support of its argument, the R.M. relies on *Manitok Energy Inc. (Re)*, 2021 ABQB 227 [*Manitok*]. Before embarking on a discussion of *Manitok*, it should be noted that leave to the Alberta Court of Appeal has been granted, though not yet heard. As will be discussed in greater detail below, *Manitok* failed to consider the Alberta Court of Appeal's decision in *PanAmericana de Bienes y Servicios v Northern Badger Oil & Gas Limited*, 1991 ABCA 181, 81 DLR (4th) 280 [*Northern Badger*].

84. In *Manitok*, the Court held that certain lien claimants were entitled to priority over end-of-life obligations. At the time of insolvency, Manitok Energy Inc. ("**Manitok**") was a licensee of 907 wells and 137 facilities and pipelines with an associated deemed liability for end-of-life obligations of $72.2 million. The Receiver entered into a sale and purchase agreement with Persist Oil & Gas Inc. for certain property of Manitok. The sale approval and vesting order discharged existing lien registrations and required the Receiver to establish separate holdbacks for the lien holders, Prentice Creek Contracting Ltd and Riverside Fuels Ltd., to stand in the place and stead of their lien registrations. The lien claims arose from services provided prior to the receivership. It was anticipated that the end-of-life obligations would be $44.5 million, substantially more than

[48] Alberta OGCA, s. 1(1)(cc); Saskatchewan OGCA, s. 2(1)(h.2).
[49] Alberta OGCA, s. 70(2)(a); Saskatchewan OGCA Regulations, 2012, s. 44.
[50] Alberta OGCA, s. 70(1); Saskatchewan OGCA Regulations, 2012, s.118(1)(b)(i).
[51] Alberta OGCA, s. 73(2); Saskatchewan OGCA, s. 20.98(c); Saskatchewan OGCA Regulations, 2012, s. 119(1).

the proceeds of sale of Manitok's property. The issue before the court was whether the lien claimants had priority over end-of-life obligations.

85. In her analysis, Romaine, J. placed undue importance on the fact that, unlike in *Redwater*, the AER had not taken any action in respect of the specific assets subject to the sale. Romaine, J. determined that the security interests filed against those assets by creditors would take priority to environmental obligations because the new purchaser had taken on the liability:

> [41] The Court notes that abandonment orders "replicate s. 14.06(7)'s effect". Clearly, the decision of the Court in *Redwater* expands the limited scope of section 14.06(7), but it does not appear to expand it to cover trust funds relating to proceeds of sale of property to which the debtors no longer have the status of "owner, party in control or licensee" at the time the orders were issued.
>
> [42] Thus, the findings in *Redwater* do not extend to a situation, such as in this case, where property unrelated to property that is affected by an environmental condition is sold to a new licensee before any abandonment or reclamation orders are made, and where the new licensee assumes the inherent end-of-life obligations for that property. In this case, the AER is not at risk for any current costs of reclamation of the transferred property.

(a) End-of-life obligations arises upon the issuance of the licence

86. The R.M. incorrectly maintains that, based on the rationale of *Manitok*, the MER has no claim to any priority to the funds arising from the sale of Bow River assets in the Vesting Order because its regulatory action did not arise until the sale.[52] The MER submits that the timing of the Abandonment Order is not determinative of the issue.

87. The reasoning of Romaine, J. assumes that the duty to perform end-of-life obligations only arises upon the issuance of abandonment and reclamation orders. Respectfully, Romaine, J. has overlooked the decision in *PanAmericana de Bienes y Servicios v Northern Badger Oil & Gas Limited*, 1991 ABCA 181, 81 DLR (4th) 280 [*Northern Badger*], where Laycraft, C.J.A (as he

[52] Brief of the Applicants at para 96.

then was) found that the duty to abandon and reclaim is an inchoate obligation that arises upon issuance of the licence:

> [32] …I respectfully agree that Northern Badger had a liability, inchoate from the day the wells were drilled, for their ultimate abandonment. It was one of the expenses, inherent in the nature of the properties themselves, taken over for management by the Receiver.

88. According to *Northern Badger*, end-of-life obligations do not arise upon the issuance of the Abandonment Order but rather, upon the issuance of the licence. In *Redwater*, Chief Justice Wagner quoted *Northern Badger* with approval and affirmed the case is still good law (at para 134). Chief Justice Wagner confirmed that end-of-life obligations form a part of the licence:

> [157] All permits held by Redwater have been received by it, subject to end-of-life obligations that would arise one day. These end-of-life obligations form a fundamental part of the value of the licenced assets, the same as if the associated costs had been paid up front. Having received the benefit of the Renounced Assets during the production period of their life cycles, Redwater cannot now avoid the associated liabilities.

89. Consequently, Bow River's duty to perform end-of-life obligations was embedded into its licence. As noted by the Supreme Court in *Redwater* at para 158, licensing requirements predate bankruptcy and apply to all licensees. Therefore, the date of the Abandonment Order does not impact Bow River's duty to perform end-of-life obligations.

(b) The MER deemed Bow River an orphan prior to the Vesting Orders

90. In *Manitok*, Romaine, J. found the orders did not apply to property over which the respondents had a lien because the change in ownership occurred prior to <u>any action</u> by the AER (at para 39, emphasis added). In the case of Bow River, although the Abandonment Order was issued two days after the transfer of the wells, the MER deemed Bow River an orphan pursuant to the *OGCA* Regulations on October 29, 2020, well before the sale of any of the assets.[53] When a well and/or facility is deemed an orphan, it is slated for closure work by the MER unless a viable purchaser can be found to assume the assets in accordance with the *OGCA* Regulations.

[53] Affidavit of Candy Dominique, sworn March 19, 2021 at para 5, filed in QBG 1705 of 2020.

91. In its Brief of Law, the R.M. attempts to challenge the MER's assertion that it was required to deem Bow River an orphan pursuant to s. 44 of the *OGCR* and emphasizes the discretionary language in s.44 of the *OGCR* and s. 17.01(1) of the *OGCA.* However, the R.M. has overlooked the mandatory language in ss. 44(1) which provides that "no well shall remain unplugged or uncased after it is no longer used for the purpose for which it was drilled or converted" (emphasis added).

92. As set out in the Facts section of this Brief, on October 15, 2020, Bow River advised the MER that, after October 29, 2020, Bow River would no longer have the financial resources to maintain care and custody or its properties or comply with its legislative and regulatory obligations.[54] Bow River also advised that all of its officers and directors would be resigning effective October 29, 2021 and that all of its employees would be terminated.[55] As such, the MER was statutorily obligated to deem Bow River an orphan on October 29, 2020 because the company was insolvent and no longer had the financial means to meet its regulatory obligations under the *OGCA*.[56] Deeming Bow River an orphan would ensure that the orphan program would address any issues that may arise at Bow River's operational sites in Saskatchewan until the wells and facility licences could be transferred or brought to closure under the orphan program.[57] Therefore, unlike in *Manitok*, the MER had already taken regulatory steps prior to the transfer of the wells.

93. Therefore, even if the decision to deem Bow River an orphan was discretionary as the Applicants argue, the decision was a reasonable exercise of the discretion conferred in s. 44 of the Regulations. Had the sites not been orphaned, they would not be under any party's care or control as of October 29, 2020. It was therefore necessary for the purposes of public safety, and for the protection of property and the environment for the MER to deem Bow River an orphan in October, 2020.

94. The MER did not issue an Abandonment Order when the Receivership commenced so that Bow River's wells could continue to operate until they were sold and transferred under the receivership.[58] The MER submits that it was not appropriate to issue the Abandonment Order until

[54] Exhibit "D" to the Affidavit of Brad Wagner, sworn October 26, 2020, filed in QBG 1705 of 2020.
[55] Affidavit of Candy Dominique, sworn February 18, 2022 at para 3, filed in QBG 1705 of 2020.
[56] Affidavit of Candy Dominique, sworn February 18, at para 3, filed in QBG 1705 of 2020.
[57] Affidavit of Candy Dominique, sworn February 18, 2022, at para 4, filed in QBG 1705 of 2020.
[58] Affidavit of Candy Dominique, sworn February 18, 2022, at para 7, filed in QBG 1705 of 2020.

the remaining inventory of well and facility licences was known following the conclusion of the sales process.[59] Without knowing the remaining inventory, the MER could not fully assess the extent of Bow River's end-of-life obligations.[60]

95. The R.M. attempts to argue that, based on *Manitok*, the "MER Orphan Well Fund" is a claim provable in bankruptcy whose priority is limited by section 14.06(7) of the *BIA*. The MER submits that ss. 14.07(7) and (8) do not apply to the public duty and obligation of Bow River to satisfy the end-of-life obligations for its oil and gas assets. The MER submits that ss. 14.06(7) and (8) of the *BIA* would only apply in a situation where the MER was advancing a claim to *recover* the costs and expenses already incurred pursuant to carrying out the Abandonment Order under s. 17.03 of the Saskatchewan *OGCA*. Section 14.06(7) does not create a charge for anticipated or future costs. Rather, the charge arises when a government incurs costs to remediate an environmental condition or damage (*Yukon (Government of) v Yukon Zinc*, YKCA 2 at paras 81, 82). The MER is making no such claim. Rather, the Receiver is proposing to distribute the residual proceeds to the MER to partially address Bow River's public duty to satisfy outstanding end-of-life obligations.[61] The proceeds would go towards abandonment work to be carried out under the Orphan Fund Procurement Program when possible.

The dissenting reasons of the Honourable Madam Justice Martin of the Alberta Court of Appeal in the *Redwater* case summarized the importance of the abandonment work for the protection of the environment and the public at pages 38-39 as follows:

> "An essential part of the distinctive licensing regime is a requirement that non-producing wells be safely and properly abandoned, meaning that the well is plugged down hole to seal it shut and prevent leaks. Remedial repairs are conducted to protect groundwater and prevent well leaks and the wellhead is removed from the surface. The site is then reclaimed, contaminants removed and the surface of the land restored to its previous condition. Abandonment and reclamation are necessary for many reasons, including ensuring public health and safety, reducing the environmental impact of drilling activities and addressing the concerns of private landowners so that they are not left with unused and potentially unsafe well sites on their land. The company that drilled and operated the well,

[59] Affidavit of Candy Dominique, sworn February 18, 2022, at para 7, filed in QBG 1705 of 2020.
[60] Affidavit of Candy Dominique, sworn February 18, 2022, at para 7, filed in QBG 1705 of 2020.
[61] First Report at para 49.

like Redwater, is legally responsible for abandonment and reclamation at the end of the well's life.

There are thousands of oil well sites that need to be properly abandoned sitting on public and private lands in Alberta, a number almost certain to increase in times of financial difficulty. End of life obligations are the key manner in which the Regulator has sought to ensure that there is the proper and safe abandonment of wells and the reclamation of well sites. End of life obligations are imposed by law and stipulated and accepted as conditions on the granting of the right to take away any public resources, the permission to extract through the required licence, and as part of any surface right acquired. The issue on the appeal addresses if, and how the bankruptcy of a licensee affects its end of life obligations. The implications for the regulation of Alberta's publicly owned resource, and for the Alberta public, are significant.

D. Municipal taxes on resource production equipment do not have a lien pursuant to *The Municipalities Act*

96. In *Manitok*, Romaine, J. found the lien holders were entitled to their claims to the proceeds in trust assuming "that the liens are valid" (at para 44). In *Manitok*, the lien holders had registered builders liens related to services provided to Manitok Energy Inc. The services performed by Prentice Creek Contracting Ltd. related to the reclamation and clean-up of specific oil and gas sites. Riverside Fuels Ltd.'s lien related to the provision of fuels and lubricants for use at certain production and operation sites. Since the liens were over property that was improved or remediated, the lien went with the property when it was sold, making the lien holders secured creditors under s. 2 of the *BIA* (*Manitok* at para 48).

97. In contrast, the R.M.'s alleged lien relates to outstanding resource production equipment taxes. Pursuant to ss. 2(1)(nn) of *The Municipalities Act*, SS 2005, c M-36.1 [the *MA*] equipment associated with a petroleum oil or gas well is classified as "resource production equipment" ("**RPE**"). RPE taxes are assessed under ss. 193(h) of *Municipalities Act*. The R.M. asserts it has a lien against the production and assets of Bow River pursuant to s. 320 of the *MA*:

> **Lien for taxes**
> **320**(1) The taxes due on <u>any property</u>:
> (a) are a lien against the property; and
> (b) are collectable by action or distraint in priority to every claim, privilege, lien or encumbrance, except that of the Crown.
> (2) A lien, and its priority, mentioned in this section are not lost or impaired by any neglect, omission or error of any employee of the municipality.

(Emphasis added)

98. The MER submits that while the *MA* creates a lien on property taxes and special taxes, RPE taxes do not fall under either of these categories.

99. In *Credit Union Central of Ontario Ltd. v Fibratech Manufacturing Inc.,* 2008 CanLII 70243 (ON SC), 51 CBR (5th) 229, the Town of Atikokan argued that the lien applying to land pursuant to the Municipal Act should be extended to the machinery and equipment used by the bankrupt company. Campbell, J. concluded that the lien was limited strictly to "land" as defined by the Municipal Act, and therefore, since the equipment and machinery were neither land or buildings, the lien did not apply (at paras 10-17).

100. In a similar result, in *Northern Sunrise County v Virginia Hills Oil Corp*, 2019 ABCA 61, 82 Alta LR (6th) 97, leave to appeal to SCC refused, 2019 CanLII 79915 (SCC) [*Virginia Hills*], the Court concluded ss. 348(d)(i) of the *Municipal Government Act*, RSA 2000, c. M-26 [*MGA*] did not create a special lien on tax arrears regarding pipelines and wells, which are classified as "linear property tax" under ss. 284(k) of the *MGA*. Section 348 of the *MGA* provides:

> 348. Taxes due to a municipality
>
> (a) are an amount owing to the municipality,
>
> (b) are recoverable as a debt due to the municipality,
>
> (c) take priority over the claims of every person except the Crown, and
>
> (d) are a special lien
>
> (i) on land and any improvements to the land, if the tax is a property tax, a community revitalization levy, a special tax, a local improvement tax or a community aggregate payment levy, or
>
> (ii) on goods, if the tax is a business tax, a community revitalization levy, a well drilling equipment tax, a community aggregate payment levy or a property tax imposed in respect of a designated manufactured home in a manufactured home community.

101. In accordance with modern principles of statutory interpretation, the Court considered the context of the *MGA* taxation scheme as a whole. The Court noted that the remedies which apply to the taxation of linear property appear in Division 9 which is headed "Recovery of Taxes Not Related to Land", suggesting that the special lien "on land and any improvements to the land" did not apply to linear property taxes (at para 45). Rather, the Court found the language of ss. 348(d)(i) more closely mirrored that of Division 8, which is headed "Recovery of Taxes Related to Land",

and which does not apply to linear property tax arrears (at para 45). The Court of Appeal held that when subsection 348(d)(i) was read in its grammatical and ordinary sense and in harmony with the scheme of the *MGA*, "property tax" does not include linear property tax arrears (at para 46). Accordingly, the Court concluded ss. 348(d)(i) did not create a special lien "on land and any improvements to land" with respect to linear property tax arrears.

102. Despite minor differences between the *MGA* and the *MA*, the principles enunciated in *Virginia Hills* are equally applicable to RPE taxes. Similar to the *MGA*, ss. 275(d)(i) of the *MA* provides that municipal property taxes create a lien:

> **Tax becomes debt to municipality**
>
> **275** Taxes due to a municipality:
>
> (a) are an amount owing to the municipality;
>
> (b) are recoverable as a debt due to the municipality;
>
> (c) take priority over all claims except those of the Crown; and
>
> (d) are a lien against the property, if the tax is:
>
> (i) a property tax;
>
> (ii) a special tax; or
>
> (iii) a local improvement special assessment

103. While the *Municipalities Act* does not distinguish between recovery of taxes "related to land" and "not related to land" like the *MGA*, the *Municipalities Act* does distinguish between property taxes, special taxes and "other taxes" in ss. 318 and 319:

> 318 The person liable to pay the tax imposed in accordance with a special tax bylaw is the person liable to pay property tax in accordance with section 319.
>
> 319(1) The person liable to pay property tax pursuant to this Act or any other Act is the person who:
>
> (a) at the time the assessment is prepared or adopted, is the assessed person; or
>
> (b) subsequently becomes the assessed person.
>
> (2) The person liable to pay any other tax imposed pursuant to this Act or any other Act is the person who:
>
> (a) at the time the tax is imposed, is liable in accordance with this Act or any other Act to pay the tax; or

(b) subsequently becomes liable in accordance with this Act or any other Act to pay the tax.

(Emphasis added)

104. Section 317, which pertains specifically to the recovery of RPE taxes, is included under Division 12, which is headed "Other Taxes". Division 12 does not pertain to special tax or property tax, but is limited to amusement tax, collection from oil or gas wells and tax increment financing programs. Pursuant to the reasoning in *Virginia Hills*, RPE taxes are classified as "other taxes" and are therefore not property taxes.

105. The *Municipalities Act* contains other specific provisions pertaining to RPE. RPE is specificially defined in ss. 2(4) of the *MA* Regulations:

> (4) For the purposes of clause 2(1)(nn) of the Act, **"resource production equipment"** includes fixtures, machinery, tools, railroad spur tracks and other appliances by which a mine or petroleum oil or gas well is operated, but does not include any of the following:
>
> (a) tipples, general offices, general stores, rooming houses, public halls or yards;
>
> (b) the following facilities at an oil or gas well, battery or gas handling site:
>
> (i) an oil storage facility;
>
> (ii) a chemical storage facility.

106. As well, the *Municipalities Act* specifically provides for the assessment and taxation of RPE under ss. 193(h):

> 193 In this Part
>
> …
>
> (h) "regulated property assessment" means an assessment for agricultural land, resource production equipment, railway roadway, heavy industrial property or pipelines;

107. The fact that that RPE taxes have their own definition, assessment and recovery scheme demonstrates that they are a distinct or "other" type of tax, separate from property tax. Moreover, s. 317 of the *Municipalities Act*, which pertains specifically to RPE taxes, does not expressly create a lien.

108. There is nothing in the current *Municipalities Act* to suggest that RPE taxes are "property taxes" within the meaning of s. 275 of the *MA*. In *United Dominions Investments Limited v Hospitality Inns Ltd. et al.*, 1981 CanLII 2312 (SK QB), [1981] 6 WWR 765, the City of Moose Jaw argued outstanding business taxes constituted a claim which ranked in priority to secured creditors. Section 373 of the now repealed *Urban Municipalities Act*, RSS 1978, c U-10 provided that land taxes constitute a special lien upon the land in priority to every other claim. However, s. 379, which pertained specifically to business tax, did not include a similar provision. McLeod, J. found that, in the absence of similar words in ss. 379(1), he could not accept the legislature intended a similar result (at para 14). In the same way, in the absence of any provisions suggesting RPE taxes are a lien, there is no reason to conclude the legislature intended such a result. Rather, the legislature's choice to place s. 317 under the heading "Other Taxes" signals a contrary intention.

109. Another issued raised in *Virginia Hills* was the uncertainty surrounding which land would be caught by a statutory lien in respect of linear property taxes. The Court of Appeal noted that linear property taxes are imposed on an operator, rather than the owner of the linear property or the owner of the land on which the linear property is situated (at para 44). The Court concluded that there was no justification to attach a lien to the parcel of land on which the linear property is situated or to the property itself unless the owner and operator happened to be the same person, which is not necessarily the case (at para 51).

110. Similar uncertainty arises regarding RPE taxes. Section 317 allows for the recovery of taxes from any entities that purchase oil or gas originating in a well with respect to which the RPE is used:

> 317(1) If taxes levied in any year with respect to the resource production equipment of a petroleum or gas well remain unpaid after that year, the administrator may give notice to any person who purchases oil or gas originating in a well with respect to which the resource production equipment is used, that the owner or operator of the well has failed to pay the taxes levied on the resource production equipment.

111. If RPE tax arrears are a lien against property, it is unclear whose land would be caught by the lien. As in *Virginia Hills*, there is a risk that a lien would attach to property that has no connection to the tax debtor.

112. The finding in *Manitok* that the lien holders had priority was premised upon their possession of a valid lien. Without a valid lien, the R.M. cannot have priority over the MER. The Respondents submit the *Municipalities Act* does not create a lien against RPE taxes and therefore, the R.M. does not have priority over the MER.

E. If a lien exists, the Crown takes priority over the R.M. pursuant to s. 320 of *The Municipalities Act*.

113. Alternatively, if the *Municipalities Act* does create a lien for outstanding RPE taxes, the statutory priority provided to the municipalities falls behind that of the Crown pursuant to ss. 320(1)(b) of the *Municipalities Act*:

> **Lien for taxes**
> **320**(1) The taxes due on any property:
> (a) are a lien against the property; and
> (b) are collectable by action or distraint in priority to every claim, privilege, lien or encumbrance, except that of the Crown.
> (2) A lien, and its priority, mentioned in this section are not lost or impaired by any neglect, omission or error of any employee of the municipality.

114. If the phrase "taxes due on any property" in ss. 320(1) of the *MA* includes taxes due on RPE, the R.M.'s priority falls behind that of the Crown by virtue of ss. 320(1)(b). The Supplemental Report of the Receiver indicates there are a number of debts owed to the Crown that will not be satisfied.[62] These debts include:

Ministry	Estimated Amount Outstanding	Nature of Claim
Energy and Resources	$200,746.15	Crown P&NG Rentals
Energy and Resources	$216,066.05	Royalties
Energy and Resources	$35,091.14	Administration Levy
Energy and Resources	$11,855.09	Orphan Levy
Agriculture	$540,021.07	Crown Surface Rentals

[62] Supplement to the First Report of BDO Canada Limited dated March 25, 2021 at para 9, filed in QBG No. 1705 of 2020

Environment	$1,023,500.97	Crown Surface Rentals
Parks, Culture and Sport	$124,021.34	Crown Surface Rentals
	$**2,151,301.81**	

115. The debts in relation to the administration levy are owing pursuant to ss. 9.11 of the *OGCA*. The debts in relation to the orphan fund fee are owing pursuant to s. 16 of the *Oil and Gas Conservation Regulations, 2012*, RSS c O-2 Reg 6. Section 53.11 of the *OGCA* provides the following:

> 53.11 All amounts required by or pursuant to this Act to be paid or remitted to the minister are a debt due to the Crown and may be recovered in any manner provided in this Act or the regulations, in any manner authorized by *The Financial Administration Act, 1993* or in any other manner authorized by law.

116. The debts in relation to royalties are payable pursuant to s. 15 of *The Crown Minerals Act*, SS 1984-85-86, c C-50.2. Subsection 46(1) of the *Crown Mineral Royalty Regulations*, RRS c C-50.2 Reg 29 provides that the minister may bring an action if any royalty owing pursuant to the Act is not paid.

117. The debts in relation to Crown surface rentals are payable pursuant to *The Provincial Lands Act*, *2016*, SS 2016, c P-31.1. By virtue of ss. 5-1(2)(b), a certificate of debt owing to the Crown pursuant to the Act has the same force and effect as if it were a judgment obtained for recovery.

118. The above debts owed to the Crown are valid claims pursuant the respective pieces of legislation under which the amounts are owing. Pursuant to ss. 320(1), the debts owed to the Crown take priority over any lien of the municipality with regard to RPE taxes. Leaving the orphan wells aside, there are insufficient proceeds for recovery by the municipalities.

VI. CONCLUSION AND REQUESTED RELIEF

119. The R.M.'s claim for the CCAA Proceeds is beyond the permissible scope of the present application and constitutes a collateral attack on the D&D Order.

120. Due to the similarities between the legislative regimes of Alberta and Saskatchewan regarding end-of-life obligations, *Redwater* applies to the Bow River Receivership. The Abandonment Order is not a claim provable in bankruptcy because, when enforcing end-of-life obligations, the MER is not a creditor. In fulfilling this statutory public duty, the MER is acting in a *bona fide* regulatory capacity and does not stand to benefit financially.

121. The *Manitok* decision should not be relied upon in these proceedings because Romaine, J. overlooked the finding in *Northern Badger* that the duty to abandon and reclaim is an inchoate obligation that arises upon issuance of the licence. Consequently, the timing of the Abandonment Order does not alter the clear legal conclusion that Bow River has an ongoing public duty to satisfy its end of life obligations prior to making any payments to its creditors.

122. Moreover, *Manitok* does not apply to the Bow River Receivership because, unlike the lienholders in *Manitok*, the R.M. does not have a valid lien. Pursuant to the reasoning in *Virginia Hills*, the *MA* does not create a lien for outstanding RPE taxes. Even if the *MA* did create such a lien, it would be rendered invalid by virtue of s. 87 of the *BIA*. In levying RPE taxes, the R.M. is performing a duty delegated by the provincial Crown, and is therefore acting in the scope of an agency relationship pursuant to *Medicine Hat*. As such, any lien created by the *MA* would be statutory Crown security, which, pursuant to s. 87 of the *BIA*, is only valid to secure a Crown claim if it has been registered. If the R.M. did not register the alleged lien, its claim for RPE taxes is unsecured under the *BIA*.

123. Finally, even if the R.M.'s alleged lien is not invalidated by s. 87 of the *BIA*, pursuant to s. 320(1)(b) of the *MA*, the lien is subservient to the Crown's claim for debts pertaining to unpaid royalties, unpaid lease payments, the administrative levy, the orphan fund levy and unpaid Crown service rentals. Aside from the end-of-life obligations, these Crown debts will leave insufficient proceeds for the R.M. to recover.

124. For the foregoing reasons, Her Majesty the Queen (as represented by the Ministry of Energy and Resources) respectfully requests:

(a) That the application of the Applicants be dismissed;

(b) Costs in the application

ALL OF WHICH is respectfully submitted at Regina, Saskatchewan, this 4th of March, 2022.

MLT Aikins LLP

Per: _____

K. James Rose, Counsel for Her Majesty the Queen (as represented by the Ministry of Energy and Resources)

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VII. LIST OF AUTHORITIES

Case	Citation	Legal Principles	Paras
143858 Canada Inc. v Ginsberg Gingras & Associates	1994 CanLII 5522 (QC CA)	Hydro-Quebec is entitled to be regarded as a Crown agent by virtue of having a registered privilege upon the moveable and immoveable property of the debtor for the price of power supplied to a debtor exploiting an industrial or commercial undertaking.	N/A
Bear v Merck Frosst Canada & Co,	2011 SKCA 152	The doctrine of abuse of process can be used to prevent the re-litigation of a claim that has already been determined by the court.	36-38
Behn v Moulton Contracting Ltd.	2013 SCC 26, 2 SCR 227	A party's delay in raising an issue is a factor in whether a claim is an abuse of process.	37
Clearbeach and Forbes	2021 ONSC 5564	The oil and gas company's obligations under the Ministry's orders were not provable in bankruptcy and therefore had to be addressed in priority to any secured or unsecured creditors. The reversed vesting order was approved despite objections from municipalities with municipal tax arrears claims.	27
Credit Union Central of Ontario Limited v Fibratech Manufacturing Inc.,	2008 CanLII 70243 (ON SC), 51 CBR (5th) 229	A municipal taxes lien is limited strictly to "land" as defined by the Municipal Act to include land or buildings and not equipment and machinery.	17
Club Pro Adult Entertainment Inc. v Ontario (Attorney General),	2006 CanLII 42254 (ON SC)	A municipality may be characterized as an agent of the Crown depending on the wording of the relevant	52

		legislation and the degree to which the provincial government constrains the acts of the municipality.	
Daishowa-Marubeni International Ltd. v Canada	2013 SCC 29, [2013] 2 SCR 336	Statutory reforestation obligations of forest tenure holders in Alberta are a future cost embedded in the forest tenure.	29, 31
Danyluk v Ainsworth Technologies Inc.	2001 SCC 44, [2001] 2 SCR 460	An order pronounced by a court having jurisdiction is binding and conclusive and not susceptible to attack in subsequent proceedings.	20
Newfoundland and Labrador v AbitibiBowater Inc.,	2012 SCC 67, [2012] 3 SCR 443	The Province is acting as a creditor rather than a public enforcer issuing an order for the public good when seeking a financial benefit	57
Northern Sunrise County v Virginia Hills Oil Corp,	2019 ABCA 61, 82 Alta LR (6th) 97, leave to appeal to SCC refused	"Property tax" as defined in the Municipal Act does not include linear property tax arrears and therefore the Municipal Act does not create a special lien on linear property tax arrears.	46
		There is no justification to attach a lien to linear property taxes when it is uncertain whose land would be caught by the lien.	51
Manitok Energy Inc (Re),	2021 ABQB 227	The findings in *Redwater* do not extend to a situation where the change in ownership takes place before any action by the regulatory agency.	39
Medicine Hat v Canada (Attorney General),	1984 CanLII 1148 (AB QB), [1984] 3 WWR 535	Duties delegated to the municipality by the provincial Crown are performed within the scope of an agency relationship.	43

Orphan Well Association v Grant Thornton Ltd.,	2019 SCC 5, 430 DLR (4th) 1	In order for an environmental obligation to be considered a claim provable in bankruptcy the three requirements set out in the "*Abitibi* test" must be met: first, there must be a debt, liability or obligations to a creditor; second, the debt, liability or obligation must have arisen before the debtor becomes bankrupt; and third, it must be possible to attach a monetary value to the debt, liability or obligation.	119
		In enforcing end-of-life obligations, a Regulator is acting in the public interest	122
		Northern Badger is still good law. End of life obligations form part of the licence.	157
PanAmericana de Bienes y Servicios v Northern Badger Oil & Gas Limited,	1991 ABCA 181, 81 DLR (4th) 280	The duty to abandon and reclaim is an inchoate obligation that arises upon the issuance of the licence and not upon the issuance of the abandonment and reclamation orders.	32
Smoky River Coal Ltd. (Re)	2000 ABQB 621, [2000] 10 WWR 147	The protection of a charge under a CCAA order expires upon the termination of CCAA proceedings.	33
Sun Indalex Finance LLC v United Steelworkers,	2013 SCC 6, [2013] 1 SCR 271	A judicially ordered constructive trust, imposed long after the fact, tends to destabilize the certainty essential for financing a workout for an insolvent corporation.	240
United Dominions Investments Ltd v Hospitality Inns Ltd et al	1981 CanLII 2312 (SK QB)	In the absence of similar words, one cannot conclude the legislature intended a similar result.	14

Yukon (Government of) v Yukon Zinc,	2021 YKCA 2	Subsection 14.06(7) of the *BIA* does not create a charge for anticipated or future costs. Rather, the charge arises when a government incurs costs to remediate an environmental condition or damage	81-82
Yolbolsum Canada Inc. v Golden Opportunities Fund Inc	2019 SKQB 285	An order pronounced by a court having jurisdiction is binding and conclusive and not susceptible to attack in subsequent proceedings.	30

Legislation

Legislation	**Citation**	**Paragraph**
Bankruptcy and Insolvency Act,	RSC 1985, c B-3	ss. 14.06 (7) and (8), s. 87, ss. 136(1)(d)
The Crown Minerals Act,	SS 1984-85-86, c C-50.2	s. 15
The Crown Mineral Royalty Regulations,	RRS c C-50.2, Reg 20	ss. 46(1)
The Municipalities Act	SS 2005, c M-36.1	ss. 2(1)(nn), 2(4), 193(h), 320, 275, 317 - 319
Municipal Government Act,	RSA 2000, c M-26	s. 348
The Oil and Gas Conservation Act	RSS 1978, c O-2	ss. 17.01(b)
Oil and Gas Conservation Regulations,	RSS c O-2 Reg 6	ss. 44, s. 114(c)
Oil and Gas Conservation Act, RSA 2000, c O-6	RSA 2000, c O-6	ss. 1, 70(2), 73(2),
The Provincial Lands Act, 2016	SS 2016, c P-31.1	ss. 5-1(2)(b)