WILLMS & SHIER ENVIRONMENTAL LAW MOOT COURT COMPETITION 2019

S.E.M.C.C. File Number: 03-02-2019

**IN THE SUPREME ENVIRONMENTAL MOOT COURT OF CANADA**

**(ON APPEAL FROM THE ALBERTA COURT OF APPEAL)**

B E T W E E N:

**ORPHAN WELL ASSOCIATION and ALBERTA ENERGY REGULATOR**

APPELLANTS
(Appellants)

- and -

**GRANT THORNTON LIMITED**

RESPONDENT
(Respondent)

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# FACTUM OF THE RESPONDENT
# GRANT THORNTON LIMITED

Pursuant to Rule 12 of the
Willms & Shier Environmental Law Moot Official Competition Rules 2019

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TEAM #2019-08

**TO:** **THE REGISTRAR OF THE**
**SUPREME ENVIRONMENTAL MOOT COURT OF CANADA**

**AND TO:** **ALL REGISTERED TEAMS**

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## PART I -- OVERVIEW AND STATEMENT OF FACTS

### A. Overview of the Respondent's Position

1 This Appeal requires this Honourable Court to assess the relationship between Canada's *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("*BIA*") and the conflicting regime by which Alberta regulates its oil and gas industry. The issues before the Court do not pit financial interests against environmental concerns. The *BIA* reflects a careful balancing act in which Parliament accommodated environmental concerns within the federal bankruptcy and insolvency regime while simultaneously creating appropriate protections for creditors, receivers, and trustees.

2 The Alberta Court of Appeal ("ABCA") did not err in holding that the end-of-life obligations imposed by Alberta's regulatory regime are claims provable in bankruptcy and therefore do not have super priority over all other claims against the estate of the Redwater Energy Corporation ("Redwater"). The Court conducted the appropriate legal analysis and found that Redwater owed an obligation to a creditor, that the obligation arose before Redwater became bankrupt, and that the obligation bore a monetary value. The Court was therefore correct to find that the demands of the Alberta Energy Regulator ("AER") on the Redwater estate were claims provable in bankruptcy that could not supersede claims with higher priority under the *BIA*.

3 Likewise, the ABCA held correctly that the licence obligations imposed by Alberta's regulatory regime conflict operationally with the *BIA* and frustrate its equitable distribution purpose. By burdening receivers and trustees with obligations from which the *BIA* protects them, Alberta's *Oil and Gas Conservation Act*, RSA 2000, c 0-6 ("*OGCA*"), and *Pipeline Act*, RSA 2000, c P-15 ("*PA*"), allow the AER to circumvent the scheme of distributive priorities that Parliament set out in the *BIA*.

4 This Honourable Court should dismiss this Appeal and affirm the ABCA's decision that the *OGCA* and *PA* are inoperative to the extent that they conflict with the *BIA*.

### B. Respondent's Position with Respect to the Appellants' Statement of the Facts

(i) Objections to the Appellants' Statement of the Facts

5 The Respondent objects to the Appellants' entry into argument in paragraphs 7, 8, 9, 10, and 13.

6 The Respondent does not accept the Appellants' assertion in paragraph 10 that the Orphan Fund levy is a security deposit. The levy is not a security deposit: it is a non-refundable fee that licensees pay in accordance with their share of liabilities (ABCA Decision; Alberta Energy Regulator).

> *Orphan Well Assn v Grant Thornton Ltd*, 2017 ABCA 124 at para 142, 50 Alta LR (6th) 1 [ABCA Decision].
> Alberta Energy Regulator, *Directive 006: Licensee Liability Rating (LLR) Program and Licence Transfer Process* (Calgary: AER, 2016) at s 7.

7 The Respondent objects to the Appellants' assertion in paragraph 10 that the Orphan Well Association ("OWA") "lacks the resources" to complete the abandonments and reclamations mentioned in that paragraph. This assertion is disputable, according to the facts accepted by the Alberta Court of Queen's Bench ("ABQB") and ABCA.

(ii) Additional Facts

8 In 2013, the Alberta Treasury Board ("ATB") advanced a secured loan to Redwater.

9 In mid 2014, Redwater experienced financial difficulties. In late 2014, Redwater and the ATB agreed that Redwater would sell assets in order to repay its loan from the ATB. In exchange, the ATB deferred Redwater's interest payments until April 30, 2015.

10 The sale of assets did not enable Redwater to repay the loan, and Redwater could not secure alternative financing. The ATB therefore applied to the ABQB to commence enforcement proceedings.

11 On May 12, 2015, the ABQB appointed Grant Thornton Ltd. ("GTL") Receiver of the Redwater estate under section 243 of the *BIA*. The AER was notified of the appointment, and, on May 14, 2015, the AER confirmed its receipt of that notification. The AER's confirmation letter indicated that GTL was a "licensee" under the *OGCA* and *PA*, and that it was therefore obligated "to comply with and fulfill all regulatory requirements associated with" the licences held by Redwater (ABQB Decision). The letter also stated that GTL was "legally and statutorily obligated to fulfill these obligations, and must do so prior to distributing any funds or finalizing any proposal to creditors, secured or otherwise" (ABQB Decision).

> *Grant Thornton Ltd v Alberta Energy Regulator*, 2016 ABQB 278 at para 19, 33 Alta LR (6th) 221 [ABQB Decision].

12 On June 25, 2015, the AER advised GTL that it expected GTL to confirm its possession and control of the total assets of the Redwater estate, and that it would not "consider any proposal dealing with the sale of assets" until it received such confirmation (ABQB Decision).

ABQB Decision, *supra* para 11 at para 21.

13 On July 3, 2015, GTL advised the AER that, in accordance with the Receivership Order issued by the ABQB, it "took possession and control of only the AER licenses, permits and approvals relating to approximately 20 of the 127 AER licensed properties" held by the Redwater estate (ABQB Decision). The wells in which GTL disclaimed interest were non-producing. GTL retained interests in the estate's valuable assets alone (ABQB Decision).

ABQB Decision, *supra* para 11 at para 22.

14 On July 14, 2015 and August 7, 2015, the AER issued abandonment orders to GTL, ordering abandonment and remediation of the properties in which GTL had disclaimed interest.

15 The ATB subsequently sought a bankruptcy order against the Redwater estate and sought the appointment of GTL as Trustee. On October 16, 2015, the ATB served the AER with a copy of its application to the ABQB.

16 On October 28, 2015, the ABQB issued the bankruptcy order and appointed GTL Trustee.

17 On November 2, 2015, GTL disclaimed the same interests that it had disclaimed as Receiver of the Redwater estate.

## PART II -- THE RESPONDENT'S POSITION WITH RESPECT TO THE APPELLANTS' QUESTIONS

18 The Respondent accepts the questions as framed by the Appellants.

## PART III -- ARGUMENT

### A. Standard of Review

19 No material facts are disputed in this appeal (ABCA Decision). Questions of law should be reviewed on a standard of correctness (*Housen*). The lower courts' findings of fact should not be reversed absent "palpable and overriding error" (*Housen*). The application of facts to a legal standard is a question of mixed fact and law that should not be reversed absent "palpable and

overriding error" (*Housen*).

ABCA Decision, *supra* para 6 at para 10.
*Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 36, [2002] 2 SCR 235 [*Housen*].

**B. Cooperative Federalism and the Doctrine of Paramountcy**

20 Canada's *Constitution Act, 1867*, (UK), 30 & 31 Vict, c 3, reprinted RSC 1985, App II, No 5, created a unified yet diverse state by apportioning jurisdiction between the federal and provincial governments (*Moloney*). Theoretically, neither level of government should interfere in the other's jurisdiction; however, overlap does occur. Although the principle of cooperative federalism recognizes that certain kinds of overlap must be allowed, the doctrine of paramountcy recognizes that "there comes a point where legislative overlap jeopardizes the balance between unity and diversity" (*Moloney*).

*Alberta (Attorney General) v Moloney*, 2015 SCC 51 at paras 14, 15-16, [2015] 3 SCR 327 [*Moloney*].

21 The doctrine of paramountcy reflects the reality that "where laws of the federal and provincial levels come into conflict, there must be a rule to resolve the impasse" (*Western Bank*). The rule is that a provincial law that conflicts operationally with a federal law or frustrates the purpose of that law will be declared inoperative to the extent that it conflicts (*Moloney*).

*Canadian Western Bank v Alberta*, 2007 SCC 22 at para 32, [2007] 2 SCR 3 [*Western Bank*].
*Moloney*, *supra* para 20 at paras 16-18, 29.

22 Although the principle of cooperative federalism demands that the doctrine of paramountcy be applied with restraint (*Moloney*), the SCC has made it clear that courts should not "refrain from applying the doctrine" when genuine inconsistency exists. A restrained approach to the doctrine of paramountcy must nevertheless ensure that when Parliament has acted to grant rights or privileges to those who fall within the ambit of its jurisdiction, provinces do not curtail those rights by coercing their renunciation or ignoring them altogether.

*Moloney*, *supra* para 20 at para 27.

23 Application of the doctrine of paramountcy requires a two-part analysis. A court must first assess whether each of the laws in dispute was enacted validly (*Moloney*). If the laws were enacted validly, the court must then determine if they conflict. This second part of the analysis has two branches. Conflict will be held to exist where the laws conflict operationally "because it is impossible to comply with both", and it will also be held to exist where the provincial law "frustrates the purpose of the federal enactment" (*Moloney*).

*Moloney*, *supra* para 20 at paras 17, 18.

24 Section 91(21) of the *Constitution Act, 1867* gives Parliament power over bankruptcy and insolvency, and section 92A(1) gives the provinces power over exploration for, development, conservation, and management of non-renewable natural resources. None of the parties in this Appeal dispute that the federal and provincial laws at issue were enacted validly (ABQB Decision). This Honourable Court can therefore proceed directly to determine whether the laws conflict.

ABQB Decision, *supra* para 11 at para 93.

25 Alberta's *OGCA* and *PA* conflict operationally with the *BIA* and frustrate its purpose. Under the authority of these provincial laws, the AER asserts claims that fall properly within the scope of the *BIA*, and the laws empower the AER to supplant the *BIA*'s distribution scheme. The Respondent therefore asks this Honourable Court to dismiss this Appeal and affirm that Alberta's *OGCA* and *PA* are inoperative to the extent that they conflict with the *BIA*.

## C. Legislative Context of the Appeal

### (i) The *BIA*

26 The *BIA* enables "the financial rehabilitation of insolvent persons", along with "the orderly liquidation of a bankrupt's estate and the distribution of the value of the assets in that estate to the bankrupt's creditors" (Houlden).

LW Houlden, GB Morawetz & Janis Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed (Toronto: Thomson Reuters, 2016) (loose-leaf updated 2019, release 1), vol 1 at 1-2 – 1-2.1 [Houlden].

27 To fulfill its distributive purpose, the *BIA* set outs out a distribution scheme that determines who among persons with claims against an estate will take priority when the assets are meted out (*BIA*). The ABCA summarized the *BIA*'s priorities of place as follows:

a) secured creditors;
b) administrative costs;
c) various "preferred creditors";
d) unsecured creditors. (ABCA Decision)

Under the *BIA*'s distribution scheme, "costs of administration" include "the expenses and fees of the trustee" (*BIA*).

*Bankruptcy and Insolvency Act*, RSC 1985, c B-3, ss 136(1), 136(1)(b) [*BIA*].
ABCA Decision, *supra* para 6 at para 42.

28 Section 14.06 of the *BIA* is included among a number of sections that identify the powers and obligations of administrative officials under the Act. Under section 14.06(1.1), where a "trustee" is referred to in sections 14.06(1.2)-(6), that title also includes receivers.

29 The SCC noted in *AbitibiBowater Inc, Re* that Parliament amended the *BIA* "very soon after" the ABCA released its decision in *Panamericana de Bienes y Servicios SA v Northern Badger Oil & Gas Ltd* ("*Northern Badger*") in June 1991, and that the enactments were "seemingly in response" to that decision (*Abitibi*). The ABQB reached similar conclusions when it considered the case that gave rise to this Appeal. Specifically, the ABQB indicated that the 1992 enactment of section 14.06(2) of the *BIA* may have been a response to the ABCA's decision in *Northern Badger* (ABQB Decision).

*AbitibiBowater Inc, Re*, 2012 SCC 67 at para 47, [2012] 3 SCR 443 [*Abitibi*].
ABQB Decision, *supra* para 11 at para 122.

30 Amendments to section 14.06 in 1997 identified the right of receivers and trustees "to abandon or renounce contaminated property" and provided the Crown with "a super priority over contaminated real property or property contiguous to it for costs of remedying any environmental condition or environmental damage affecting real property that are incurred" (ABQB Decision).

ABQB Decision, *supra* para 11 at paras 122-23.

(ii) Alberta's Regulatory Regime

31 Alberta's *Responsible Energy Development Act*, SA 2012, c R-17.3, established the AER with a mandate to regulate Alberta's oil and gas industry. As the ABCA noted, the AER "fulfils its mandate by issuing a separate licence for each oil and gas well or pipeline, and then by imposing on the licensee conditions which control all aspects of the operation, disposition and eventual shutting-in of the licensed property" (ABCA Decision). By virtue of section 1(1)(cc) of the *OGCA* and section 1(1)(n) of the *PA*, receiver-managers and trustees are "licensees", and the AER therefore considers them subject to its control.

ABCA Decision, *supra* para 6 at para 11.

32 Under section 24 of the *OGCA* and section 18 of the *PA*, the AER controls transfers of oil and gas licenses from one party to another. As the ABQB found, the AER is therefore able to "block a sale by withholding the transfer of licenses unless the transfer conditions it imposes are met" (ABQB Decision).

ABQB Decision, *supra* para 11 at para 5.

33 The AER's discretion to approve or withhold approval of license transfers is exercised in accordance with various internal Directives. The ABQB found that applicable Directives advise the AER to refuse the transfer of licenses under section 24 of the *OGCA* and section 18 of the *PA* if the sales process will diminish the licensee's Liability Management Ratio ("LMR") (ABQB Decision).

ABQB Decision, *supra* para 11 at paras 5, 25-29.

34 The AER uses a Licensee Liability Rating ("LLR") program to monitor the balance of a licensee's assets and liabilities (ABQB Decision). Under the program, each licensee is assigned an LMR. As the ABCA noted, the formula used to calculate the licensees' LMRs produces values "that have no direct relationship to the fair market value" of the licensees' assets (ABCA). An LMR of 1.0 means that a licensee "has at least as many notional assets as liabilities" (ABCA), and the ABQB found that the AER's practice is not to approve licence transfers by a licensee if that licensee's LMR is below 1.0 (ABQB Decision).

ABQB Decision, *supra* para 11 at paras 28, 29.
ABCA Decision, *supra* para 6 at para 15.

35 When this case came before the ABQB, Redwater's LMR was 0.93 (ABQB Decision). Relying upon an affidavit sworn by Patricia Johnston, Executive Vice President and General Counsel for the AER, the ABQB found that if GTL, as Receiver of the Redwater estate, were to propose a license transfer that would further diminish Redwater's LMR, the AER would expect GTL to do one of a number of things to reduce the estate's liabilities: "post a security deposit"; "abandon and reclaim some licensed properties"; or "transfer some liabilities of one or more of the licensed properties, subject to the AER's consent (sell asset packages bundled in a way that essentially bad assets balance out the good assets so the LMR does not worsen)" (ABQB Decision).

ABQB Decision, *supra* para 11 at para 30.

36 When a licensee cannot provide for the abandonment and remediation of a licenced property, the AER may deem that property an "orphan" under section 70(2) of the *OGCA* (*OGCA*). The AER is empowered to carry out the abandonment and remediation of properties it licenses and to seek subsequent reimbursement from the licensee (ABQB Decision; *OGCA*); however, through the Orphan Fund Delegated Administration Regulation ("OFDAR"), the Regulator delegates its authority over orphaned properties to the OWA. The OWA sets its own

priorities for the abandonment and management of orphaned assets, but it must do so "in accordance with the overriding direction and authorization of the Regulator" (OFDAR).

*Oil and Gas Conservation Act*, RSA 2000, c 0-6, ss 70(2), 28, 30(5).
ABQB Decision, *supra* para 11 at para 168.
Alta Reg 25/2001, s 3(1)(b)(i) [OFDAR].

## D. The ABCA Did Not Err in Finding that End-of-Life Obligations for Licenced Properties Are Claims Provable in Bankruptcy and Therefore Do Not Have Super Priority in Bankruptcy Proceedings.

37 The ABCA applied the correct test in deciding that the AER's regulatory order was a claim provable in bankruptcy with the result that Redwater's end-of-life obligations were subject to the insolvency process. In *Abitibi*, the SCC designed a three-part test to determine whether an order for environmental remediation issued by a regulator is a claim provable in bankruptcy:

> First, there must be a debt, a liability or an obligation to a creditor. Second, the debt, liability or obligation must be incurred before the debtor becomes bankrupt. Third, it must be possible to attach a monetary value to the debt, liability or obligation. (*Abitibi*)

This three-part test was affirmed in *Moloney* (*Moloney*). The ABQB and ABCA applied this test to the AER's requirement that Redwater's end-of-life obligations be satisfied before the distribution of Redwater's estate. They did not err in finding that the test was met.

*Abitibi*, *supra* para 29 at para 26.
*Moloney*, *supra* para 20 at para 55.

### (i) The AER Is a Creditor for the Purposes of the *Abitibi* Test

38 In the courts below, the Appellants conceded that the first two parts of the *Abitibi* test were satisfied (ABQB Decision; ABCA Decision). The Appellants now contend that the AER is not a creditor, but should instead be considered a regulator enforcing a public duty, as the Energy Resources Conservation Board ("ERCB") was held to be in *Northern Badger* ("Factum").

ABQB Decision, *supra* para 11 at para 164.
ABCA Decision, *supra* para 6 at para 73.
Factum of the Appellants at paras 20, 23.

39 When querying whether the regulatory body at issue in *Abitibi* was a creditor, the SCC stated clearly that: "[t]he only determination that has to be made at this point is whether the regulatory body has exercised its enforcement power against a debtor. When it does so, it identifies itself as a creditor, and the requirement of this stage of the analysis is satisfied" (*Abitibi*). In this case, the AER identified itself as a creditor and satisfied the first of the *Abitibi*

requirements when it ordered GTL to abandon properties in which it had disclaimed interest and to post security with funds from the Redwater estate.

*Abitibi*, *supra* para 29 at para 27.

40 The SCC considered *Northern Badger* when it formulated the *Abitibi* test, and the Court noted that insolvency legislation had evolved significantly since *Northern Badger* was decided in 1991 (*Abitibi*). Neither the current environmental liability provisions in the *BIA* nor the SCC's *Abitibi* test existed when the ABCA determined in *Northern Badger* that the ERCB was not a creditor. In this case, the ABCA applied the proper considerations under the current law when it determined that the AER was a creditor under the first part of the *Abitibi* test.

*Abitibi*, *supra* para 29 at paras 44-48.

(ii) The Abandonment Obligations Were Incurred Before Redwater Became Bankrupt

41 The second part of the *Abitibi* test is also satisfied. The end-of-life obligations at issue existed before Redwater became bankrupt (ABQB Decision).

ABQB Decision, *supra* para 11 at paras 4, 19, 23.

(iii) It Is Possible to Attach a Monetary Value to the Abandonment Obligations

42 The third part of the *Abitibi* test is satisfied, as requiring the posting of a security deposit and requiring the abandonment of disclaimed interests are orders that can be translated into monetary terms. For this analysis, it is easier to separate the three core ways the AER provided for satisfying Redwater's abandonment obligations: 1) posting a security deposit; 2) selling the un-productive disclaimed interests with the retained productive assets; or, 3) requiring the abandonment of disclaimed interests.

43 Requiring the posting of a security deposit is a claim framed in monetary terms, as it is for a distinct amount readily calculable by the AER. In *Abitibi*, the SCC noted that claims framed in monetary terms inherently satisfy part three of the test as they clearly fall within the *BIA*'s meaning of "claim" (*Abitibi*).

*Abitibi*, *supra* para 29 at para 30.

44 Selling the un-productive disclaimed interests bundled with the retained productive assets was not a viable option for GTL. According to the AER's calculations, Redwater had no net value in its estate (ABCA Decision). The estimated cost to remediate the un-productive wells exceeded the value of the productive assets by $553,000 (ABCA Decision). If all of the assets

were included in a sale, there would have been no economic incentive for a buyer to agree to the terms of the sale.

ABCA Decision, *supra* para 6 at para 20, 19.

45 Requiring the abandonment of the disclaimed interests is a contingent claim that can be translated into monetary terms and is therefore also provable in bankruptcy. In the context of environmental orders, a contingent claim can be a claim provable in bankruptcy when it is sufficiently certain that "the regulatory body that triggered the enforcement mechanism will ultimately perform remediation work and assert a monetary claim to have its costs reimbursed" (*Abitibi*). The SCC also identified the importance of taking the substance of the orders into account and grounding the analysis in the facts of the case (*Abitibi*). It listed four indicators that can help guide the court in determining whether an environmental order meets this sufficient certainty test: 1) whether the activities relating to the environmental order are ongoing; 2) whether the debtor is in control of the property; 3) whether the debtor has the means to comply with the order; and, 4) what the effect on the insolvency process of requiring the debtor to comply with the order would be (*Abitibi*).

*Abitibi*, *supra* para 29 at paras 36, 31, 38.

1) The Activities Relating to the Environmental Orders Are Not Ongoing

46 The activities that led to the AER requesting abandonment are not ongoing. This suggests that the AER's demands constitute a provable claim. None of the properties that the Receiver disclaimed and that are subject to abandonment orders are still operating. They were shut in before the Receiver was appointed, they will likely not be operated in the future (ABQB Decision). There is no risk that environmental damage will accrue after the bankruptcy process is complete.

ABQB Decision, *supra* para 11 at para 79.

2) The Debtor is Not in Control of the Property

47 Because GTL renounced its interests in the properties at issue, it is sufficiently certain that the AER will have to perform the remediation work. Neither Redwater nor the Receiver control the properties. The AER clearly indicated in the letter that accompanied its abandonment order of July 14, 2015, that if Redwater failed to comply with the order, the AER would "use [its] process to have the properties abandoned" and "exercise all remedies available to it to

recover costs from the liable parties" (ABQB Decision). This letter shows direct intent to abandon the properties and seek reimbursement from Redwater's estate. The Appellants contend that "the AER rarely if ever seeks reimbursement and there is no reason to expect that it would in this case" (Factum). When referencing this letter, the ABQB confirmed the AER had the power to abandon wells and seek reimbursement and that it showed intent to do so in this case (ABQB Decision). This is a finding of fact that should not be disturbed by this Honourable Court.

ABQB Decision, *supra* para 11 at paras 23, 168, 172.
Factum of the Appellants at para 30.

48 Whether the AER conducts the remediation work itself or delegates the task to the OWA, requiring the abandonment of the disclaimed interests creates a provable claim. The OWA operates under authority delegated by the AER, and it steps into the shoes of the Regulator for the purposes of managing and abandoning orphaned wells. It is statutorily authorized to exercise this regulatory power, and it acts as the Regulator to the extent that it performs these functions (*OGCA;* OFDAR). As noted by the ABCA, if security is set aside or funds are diverted to satisfy abandonment costs, it does not matter which regulator or delegate carries out the remediation: either way, the *Abitibi* principles are engaged and the claim is translated into monetary terms (ABCA Decision). Regardless of whether the AER or OWA carries out the abandonment, a debt is still created and owed to the AER pursuant to section 30(5) of the *OGCA*, and the Regulator can seek reimbursement for the cost (*OGCA*).

*OGCA*, *supra* para 36 at ss 28(b), 30(5).
OFDAR, *supra* para 36 at s 3.
ABCA Decision, *supra* para 6 at para 78.

3) The Debtor Does Not Have the Means to Comply with the Order

49 Redwater's insolvency further suggests that the sufficient certainty test is met. GTL lawfully renounced the disclaimed interests shortly after being appointed receiver (ABQB Decision). Redwater does not have the means to comply with the order. The disclaimed interests will fall under the control of the AER, which will either carry out the abandonment itself or delegate abandonment obligations to the OWA. As seen in *Nortel Networks Corp, Re*, a distinction should be made between cases where there is a party capable of carrying out the order and where there is not (*Nortel*). When applying the *Abitibi* test, the Ontario Court of Appeal found it sufficiently certain the Minister of Environment would carry out Nortel's obligations under the one order where there was no other party to undertake the responsibilities (*Nortel*). It is

sufficiently certain the AER will carry out the abandonment obligations of the disclaimed interests and seek reimbursement, as there is no one else available to carry out these responsibilities.

> ABQB Decision, *supra* para 11 at para 22.
> *Nortel Networks Corp, Re*, 2013 ONCA 599 at paras 39-41, 41, 368 DLR (4th) 122 [*Nortel*].

4) Requiring Compliance with the Order Would Have a Detrimental Effect on the Insolvency Process

50 If GTL, operating on Redwater's behalf, were required to abandon the disclaimed interests, it would have a profound effect on the insolvency process and disturb Parliament's distribution scheme. This strongly suggests that the abandonment orders are a provable claim. Requiring abandonment of the disclaimed interests would divert substantially all of the funds from Redwater's estate (ABCA Decision). It would subvert the established distribution scheme set out in the *BIA* and likely eliminate any recovery by secured creditors (ABCA Decision). As noted by the ABCA, it would essentially "create a super priority for environmental claims" (CA Decision). Parliament chose to accord environmental obligations a limited super priority in bankruptcy, and these obligations do not fall within these limits (*BIA*). The ABCA touched on the profound impact that complying with the AER's orders would have on the insolvency process when it found:

> If the remediation costs do enjoy a super priority, there would be no point to the Alberta Treasury Branches retaining and paying an insolvency professional to wind up the estate. The prudent lender in the circumstances would simply walk away from its loans, and all of the wells would truly become "orphaned" (ABCA Decision)

> ABCA Decision, *supra* para 6 at paras 19-20, 19, 81, 20.
> *BIA*, *supra* para 27 at s 14.06(7).

51 Applied to the facts of the case, the *Abitibi* indicators show that the AER's orders to abandon the disclaimed interests pass the sufficient certainty test and are claims that can be translated into monetary terms. Whether a security deposit is set aside or estate funds are used to abandon the disclaimed interests, the effect on the insolvency proceedings is the same. Funds are diverted from Redwater's estate in order to satisfy the AER's claim in advance of any other creditors. The abandonment obligations clearly have a monetary value, and they constitute a claim provable in bankruptcy. There is no constructive trust. To find otherwise would be to ignore the substance of the abandonment orders and defeat Parliament's decision not to give a general super priority to environmental claims in bankruptcy.

## E. The ABCA Did Not Err in Holding that the Licence Obligations Created by the *OGCA* and *PA* Conflict with and Frustrate the Scheme of Priorities Set Out in the *BIA*.

52 As claims provable in bankruptcy, the licence obligations imposed by Alberta's regulatory regime conflict operationally with the *BIA* and frustrate its equitable distribution purpose. By burdening receivers and trustees with obligations from which the *BIA* protects them, the *OGCA* and *PA* allow the AER to circumvent the scheme of distributive priorities that Parliament set out in the *BIA*.

### (i) Canada's Silence in This Matter Is Irrelevant

53 One preliminary matter must be addressed before this stage of the analysis proceeds. The Appellants state that Canada's courts "have cautioned against invalidating provincial legislation where the federal government does not contest its validity", and they point to *OPSEU v Ontario (Attorney General)* ("*OPSEU*") and *Kitkatla Band v British Columbia (Minister of Small Business, Tourism and Culture)* ("*Kitkatla*") ("Factum"). These submissions are misleading.

54 In *OPSEU* and *Kitkatla*, Canada intervened to argue in support of the validity of the provincial laws that were challenged (*OPSEU*; *Kitkatla*). In neither case did Canada simply "not contest" the validity of the laws. These cases provide no authority for the Appellants' suggestion that this Honourable Court should give weight to Canada's silence in this matter.

> Factum of the Appellants at para 51.
> *OPSEU v Ontario (Attorney General)*, [1987] 2 SCR at pages 19-21, 41 DLR (4th) 1 [*OPSEU*].
> *Kitkatla Band v British Columbia (Minister of Small Business, Tourism and Culture)*, 2002 SCC 31 at paras 72-73, [2002] 2 SCR 146 [*Kitkatla*].

### (ii) Alberta's Regulatory Regime Conflicts Operationally with the *BIA*

55 Section 14.06 of the *BIA* identifies circumstances in which receivers and trustees may disclaim interests that would otherwise be subject to their control. In doing so, it protects receivers and trustees from obligations that carry financial risks. Alberta's *OGCA* and *PA* do not allow such renunciation (ABQB Decision), and these differences lead to operational conflicts that trigger the doctrine of paramountcy.

> ABQB Decision, *supra* para 11 at para 151.

56 As the ABQB recognized, section 14.06 of the *BIA* enables renunciation "with the purpose of protecting the trustee and receiver with the ultimate goal of equitable distribution" (ABQB Decision). Specifically, section 14.06 protects receivers and trustees by enabling them to

assess the economic viability of the estates with which they are vested and, if necessary, disclaim interests in order to maximize recovery for creditors and shield themselves from financial loss.

ABQB Decision, *supra* para 11 at para 178.

57 Imagine for a moment that GTL had not disclaimed its interests in the non-producing wells, and that there had still come a point where abandonment and remediation were deemed necessary by the AER. At what point, under either the *BIA* or the provincial regime, could GTL have acted to protect itself from financial loss when it saw that the assets of the estate would be exhausted by the costs of abandonment and remediation, and that its costs of administration could not possibly be recuperated if it continued?

58 Subsection 14.06(4)(a)(i) of the *BIA* provides that a receiver or trustee, having received a remediation order of the kind described in section 14.06(4), "is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order" if the receiver or trustee complies with the order within the time specified. This provision would have protected GTL from being sued for compensation if the estate's assets were exhausted before contractors hired to carry out the abandonment and remediation work were fully paid. It would not have protected GTL from the losses it would have incurred by administering the estate up to the point of exhaustion.

59 Trustees in bankruptcy are expected to look out for their own interests. As the authors of *Bankruptcy and Insolvency Law of Canada* put it, "[i]t is the responsibility of the trustee, before accepting an appointment, to protect himself or herself against the contingency of having to bear his or her own expenses of administering the estate because of insufficiency of assets" (Houlden). This is a basic tenet of Canada's bankruptcy and insolvency law, and it is reflected in judicial decisions with longstanding authority (Houlden; *Auto Experts*; *Re Hoyt*).

Houlden, *supra* para 26 at 1-91.
*Auto Experts Ltd, Re*, 1921 CarswellOnt 2 at para 10, 1 CBR 418 [*Auto Experts*].
*Re Hoyt*, 1933 CarswellNB 1 at para 13, 14 CBR 486 [*Re Hoyt*].

60 Had GTL taken control of the non-producing wells and provided for their abandonment and remediation until the assets of the estate were exhausted, it would have provided a free service to the AER, as its costs of administration would have fallen on its shoulders alone (ABQB Decision). The ABCA's decision makes this very clear. The Redwater estate "had no net value" according to the AER's LLR and LMR formulae, and the ABCA averred that, if the AER had its way, the ATB "would not be entitled to any recovery after the insolvency given the value

of the various assets and the inherent environmental liabilities that were outstanding" (ABCA Decision). Because the *BIA*'s distribution scheme ranks trustees' costs of administration below the debts owed to secured creditors, GTL would likewise have had zero hope of recovery.

ABQB Decision, *supra* para 11 at para 176.
ABCA Decision, *supra* para 6 at paras 18-19.

61 This is why section 14.06(5) of the *BIA* allows a court with jurisdiction in bankruptcy to stay a remediation order of the kind described in section 14.06(4) so that "the economic viability of complying with the order" can be assessed, and it is why section 14.06(4)(a)(ii) enables a receiver or trustee to disclaim "any interest in any real property, or any right in any immovable" captured by that remediation order during the period of a stay granted under section 14.06(4)(b). Together, these subsections enable a receiver or trustee to walk away from interests in order to protect itself from financial losses, even after having accepted an appointment and been vested with an estate.

62 Section 14.06 reflects Parliament's decision to safeguard receivers and trustees in order to enable the essential functions of the *BIA* on the whole. The section gives a receiver or trustee that has taken control of an estate a way out if an environmental order imperils its financial interests. This protection supports the necessary functions of the federal bankruptcy and insolvency regime overall, as receivers and trustees would otherwise refuse to manage insolvent or liquidate bankrupt estates that might require environmental action. As the ABCA recognized, the "primary tool of the BIA is the 'trustee in bankruptcy'" (ABCA Decision). If receivers and trustees refuse to participate in these processes, the system crumbles.

ABCA Decision, *supra* para 6 at para 42.

63 Parliament's concern for the financial interests of receivers and trustees explains why section 14.06(4)(c) of the *BIA* recognizes the right of receivers and trustees to disclaim interests even before an environmental remediation order of the kind described in section 14.06(4) is issued. A trustee in bankruptcy that assesses an estate and determines that the estate cannot accommodate likely costs of environmental mitigation or remediation can and should disclaim risky interests promptly. In doing so, it discharges the duties it owes to itself and to creditors of the estate. There is nothing unseemly or unlawful in receivers and trustees taking such actions to maximize recovery for creditors and ensure that their own costs will be satisfied: such actions honour the Parliamentary scheme on the whole.

64 The circumstances that gave rise to this Appeal illustrate another way in which Alberta's regulatory regime exposes receivers and trustees to financial risks from which the *BIA* protects them. Under section 14.06(6), a receiver or trustee that disclaims interests under section 14.06(4) cannot later conduct environmental remediation of those interests and claim its costs as costs of administration. Its costs would rank among the debts owed to unsecured creditors of the estate, and so the receiver or trustee would likely pay out of pocket.

65 In this case, Redwater's assets were such that GTL would certainly have paid out of pocket if it had undertaken the abandonment and remediation of the properties it disclaimed. It is difficult to imagine why any receiver or trustee would accept such an obligation after lawfully disclaiming interests, yet that is precisely what the AER commanded GTL to do.

66 The AER misconstrued the scope of GTL's rights under the *BIA*. The Regulator did not recognize GTL's lawful renunciation of interests, and it therefore expected GTL to foot the bill for the abandonment and remediation it ordered. The only way GTL could have complied with the AER's expectations would have been to ignore its rights under the *BIA*, choose not to disclaim any interests in the Redwater estate, and, if the non-producing wells could not be sold, undertake abandonment and remediation at its own expense.

67 In *Moloney*, the SCC stated clearly that "impossibility of dual compliance" exists where dual compliance with a federal and a provincial regime requires the renunciation of a right or privilege that the federal law accords (*Moloney*). The ABCA held correctly that Alberta's *OGCA* and *PA* conflict operationally with the *BIA* by denying rights that the *BIA* provides and imposing obligations from which the *BIA* protects (ABCA Decision). In doing so, the provincial Acts also defy the scheme of distributive priorities that Parliament set out in the *BIA*.

> *Moloney*, *supra* para 20 at paras 60, 73.
> ABCA Decision, *supra* para 6 at para 89.

68 The *OGCA* and *PA* empower the AER to coerce compliance with Alberta's regulatory regime so that receivers and trustees have no choice but to satisfy the AER's expectations over and above Parliament's distribution scheme. The AER's confirmation letter of May 14, 2015 stated clearly that the Regulator expected GTL to fulfill its alleged obligations "prior to distributing any funds or finalizing any proposal to creditors, secured or otherwise" (ABQB Decision), and the AER acknowledged in its written submission to the ABCA that "compliance with its orders may ultimately lessen amounts recovered by the creditors because the costs of compliance are paid from the assets in the estate" (ABCA Decision). Whereas the *BIA* prevents

bodies like the AER from asserting effective super priorities over all other persons who are entitled to recovery under the federal regime, the *OGCA* and *PA* lead inexorably to the satisfaction of the AER over all other creditors. The ABCA held correctly that this is operational conflict (ABCA Decision), and this Honourable Court should not disturb the ABCA's declaration that the relevant sections of the *OGCA* and *PA* were inoperative as a result.

ABQB Decision, *supra* para 11 at para 19.
ABCA Decision, *supra* para 6 at paras 90, 26.

(iii) Alberta's Regulatory Regime Frustrates the Equitable Distribution Purpose of the *BIA*

69 In holding as it did in *Moloney*, the SCC rejected the approach recommended in the concurring opinion of Côté J., who took a narrow view of operational conflict and held that "impossibility of dual compliance" should only be found where there is no possible way to comply with both regimes.

*Moloney*, *supra* para 20 at para 123.

70 If this Honourable Court is not persuaded that the limited choices available to receivers and trustees under the *OGCA* and *PA* create impossibility of dual compliance, it should nevertheless find that Alberta's regulatory regime frustrates the purpose of the *BIA.*

71 The SCC in *Moloney* accepted that the *BIA* "furthers two purposes: the equitable distribution of the bankrupt's assets among his or her creditors and the bankrupt's financial rehabilitation" (*Moloney*). The SCC held further that the *BIA* balances principles of equitable distribution with preferential provisions that allow certain creditors to "be paid in priority", and the Court opined that the priorities established in the *BIA* "reflect the policy choices made by Parliament" in creating a fair and balanced distribution scheme (*Moloney*).

*Moloney*, *supra* para 20 at 32-35.

72 As argued above, accepting the Appellants' position on section 14.06 of the *BIA* would give the AER an effective super priority over all other parties who are entitled to recovery under the *BIA*. When it enacted the environmental liabilities sections of the *BIA*, Parliament weighed competing interests and decided that regulators enforcing environmental orders should not be given a general super priority within the federal bankruptcy and insolvency regime (ABQB Decision). As the ABQB noted: "if Parliament chooses to reassess, it will legislate" (ABQB Decision). Until then, Alberta's *OGCA* and *PA* must not be allowed to frustrate Parliament's

purpose.

ABQB Decision, *supra* para 11 at paras 133, 133.

## F. Conclusion

73 The unfortunate reality of bankruptcy and insolvency is that a bankrupt entity will rarely have assets sufficient to satisfy its total obligations. Some creditors will not be repaid in full. That is why Parliament carefully weighed competing interests when it devised its distribution scheme.

74 Striking the right balance between environmental concerns and the interests of receivers and trustees was necessary after *Northern Badger*, and Parliament's careful decision is reflected in section 14.06 of the *BIA*. The Appellants contend that granting their Appeal will uphold the "polluter-pay" principle ("Factum"); however, allowing the AER to circumvent the *BIA*'s distribution scheme would introduce a "third-party pay" principle into Canadian environmental law. As the SCC noted in *Abitibi*, "full compliance with orders that are found to be monetary in nature would shift the costs of remediation to third-party creditors" and would replace the "polluter-pay" principle with a "third-party pay" principle (*Abitibi*). This might diminish lenders' willingness to finance oil and gas projects and result in insufficient financing for a critical Canadian industry (ABCA Decision).

Factum of the Appellants at paras 53-54, 96.
*Abitibi*, *supra* para 29 at para 40.
ABCA Decision, *supra* para 6 at para 96.

75 Subjecting the AER's environmental orders to the insolvency process does not extinguish Redwater's environmental obligations (*Abitibi*); it simply puts the AER in its appropriate place amongst all of the parties that have claims to the remaining assets of the Redwater estate. The best way to uphold the "polluter-pay" principle would be for Alberta to change its oil and gas licensing and management regime. A well operator who benefits from the extraction of oil and gas should pay the costs of cleanup once the well is done producing. Unfortunately, Alberta's licensing scheme lacks the appropriate checks and balances to make this a reality.

*Abitibi*, *supra* para 29 at para 40.

76 Diverging from demonstrably successful industry practices, Alberta does not require up-front financial assurance before granting a license to drill, nor does the Province impose mandatory timelines on the abandonment and remediation of non-producing wells and their well-sites (Dachis). Instead, Alberta's regime allows operators like Redwater to take the benefits of

extraction without posting security in advance, and to leave wells in states of indefinite limbo when they cease producing.

> Benjamin Dachis, Blake Shaffer & Vincent Thivierge, "All's Well that Ends Well: Addressing End-of-Life Liabilities for Oil and Gas Wells" (September 2017) at 17, 18, online (pdf): CD Howe Institute <www.cdhowe.org/public-policy-research/all's-well-ends-well-addressing-end-life-liabilities-oil-and-gas-wells> [Dachis].

77 Forcing the financial burden of environmental obligations onto creditors, receivers, and trustees will not ensure that the polluter pays. The best way to uphold the "polluter-pay" principle would be for Alberta to adopt the industry best practice and require up-front financial assurance before granting licences to drill. Alberta is aware of the problems with its regime and is actively reviewing how it licenses and manages oil and gas wells (Government of Alberta). This is the proper way for the Province to demonstrate care for the environment.

> Government of Alberta, Announcement, "Review of old wells to protect Albertans, environment" (10 May 2017), online: *Government of Alberta Announcements* <www.alberta.ca/release.cfm?xID=4688680C061E7-B956-4216-F3B0C81A4E6D479A> [Government of Alberta].

78 The AER should not be allowed to flout the principle of cooperative federalism by imposing obligations that enable it to circumvent the distribution scheme that Parliament set out in the *BIA*. This Honourable Court should uphold the decision of the ABCA and affirm that Alberta's *OGCA* and *PA* are inoperative to the extent that they conflict with the *BIA*.

## PART IV -- SUBMISSIONS IN SUPPORT OF COSTS

79 The Respondent respectfully requests its costs in this Appeal.

## PART V -- ORDER SOUGHT

80 The Respondent respectfully requests that this Appeal be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 4th day of February, 2019.

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Tina Northrup

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Riley Weyman

Counsel for the Respondent
Grant Thornton Limited

## PART VI -- TABLE OF AUTHORITIES

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| *Constitution Act, 1867*, (UK), 30 & 31 Vict, c 3, reprinted RSC 1985, App II, No 5. | 24 |
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| Alberta Energy Regulator, *Directive 006: Licensee Liability Rating (LLR) Program and Licence Transfer Process* (Calgary: AER, 2016). | 6 |

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| *AbitibiBowater Inc, Re*, 2012 SCC 67, [2012] 3 SCR 443. | 29. 37, 39, 40, 45, 74, 75 |
| *Alberta (Attorney General) v Moloney*, 2015 SCC 51, [2015] 3 SCR 327. | 20, 21, 22, 23, 37, 67, 71 |
| *Auto Experts Ltd, Re* (1921), 1 CBR 418, 1921 CarswellOnt 2. | 59 |
| *Canadian Western Bank v Alberta*, 2007 SCC 22, [2007] 2 SCR 3. | 21 |
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| *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235. | 19 |
| *Hoyt, Re* (1993) 14 CBR 486, 1933 CarswellNB 1. | 59 |
| *Kitkatla Band v British Columbia (Minister of Small Business, Tourism and Culture)*, 2002 SCC 31, [2002] 2 SCR 146. | 54 |
| *Nortel Networks Corp, Re*, 2013 ONCA 599, 368 DLR (4th) 122. | 49 |
| *OPSEU v Ontario (Attorney General)*, [1987] 2 SCR, 41 DLR (4th) 1. | 54 |
| *Orphan Well Assn v Grant Thornton Ltd*, 2017 ABCA 124, 50 Alta LR | 6, 19, 27, 31, |

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| Dachis, Benjamin, Blake Shaffer & Vincent Thivierge, "All's Well that Ends Well: Addressing End-of-Life Liabilities for Oil and Gas Wells" (September 2017) online (pdf): CD Howe Institute<www.cdhowe.org/public-policy-research/all's-well-ends-well-addressing-end-life-liabilities-oil-and-gas-wells>. | 76 |
| Government of Alberta, Announcement, "Review of old wells to protect Albertans, environment" (10 May 2017), online: *Government of Alberta Announcements* <www.alberta.ca/release.cfm?xID=4688680C061E7-B956-4216-F3B0C81A4E6D479A>. | 77 |
| Houlden, LW, GB Morawetz & Janis Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed (Toronto: Thomson Reuters, 2016) (loose-leaf updated 2019, release 1). | 26, 59 |

## PART VII -- LEGISLATION AT ISSUE

*Bankruptcy and Insolvency Act*, RSC 1985, c B-3

**No trustee is bound to act**

**14.06 (1)** No trustee is bound to assume the duties of trustee in matters relating to assignments, bankruptcy orders or proposals, but having accepted an appointment in relation to those matters the trustee shall, until discharged or another trustee is appointed in the trustee's stead, perform the duties required of a trustee under this Act.

**Application**

**(1.1)** In subsections (1.2) to (6), a reference to a trustee means a trustee in a bankruptcy or proposal and includes

**(a)** an interim receiver;

**(b)** a receiver within the meaning of subsection 243(2); and

**(c)** any other person who has been lawfully appointed to take, or has lawfully taken, possession or control of any property of an insolvent person or a bankrupt that was acquired for, or is used in relation to, a business carried on by the insolvent person or bankrupt.

**No personal liability in respect of matters before appointment**

**(1.2)** Despite anything in federal or provincial law, if a trustee, in that position, carries on the business of a debtor or continues the employment of a debtor's employees, the trustee is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,

(a) that is in respect of the employees or former employees of the debtor or a predecessor of the debtor or in respect of a pension plan for the benefit of those employees; and

(b) that exists before the trustee is appointed or that is calculated by reference to a period before the appointment.

**Status of liability**

**(1.3)** A liability referred to in subsection (1.2) is not to rank as costs of administration.

**Liability of other successor employers**

**(1.4)** Subsection (1.2) does not affect the liability of a successor employer other than the trustee.

**Liability in respect of environmental matters**

**(2)** Notwithstanding anything in any federal or provincial law, a trustee is not personally liable in that position for any environmental condition that arose or environmental damage that occurred

**(a)** before the trustee's appointment; or

**(b)** after the trustee's appointment unless it is established that the condition arose or the damage occurred as a result of the trustee's gross negligence or wilful misconduct or, in the Province of Quebec, the trustee's gross or intentional fault.

**Reports, etc., still required**

**(3)** Nothing in subsection (2) exempts a trustee from any duty to report or make disclosure imposed by a law referred to in that subsection.

**Non-liability re certain orders**

**(4)** Notwithstanding anything in any federal or provincial law but subject to subsection (2), where an order is made which has the effect of requiring a trustee to remedy any environmental condition or environmental damage affecting property involved in a bankruptcy, proposal or receivership, the trustee is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

**(a)** if, within such time as is specified in the order, within ten days after the order is made if no time is so specified, within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, or during the period of the stay referred to in paragraph (b), the trustee

**(i)** complies with the order, or

**(ii)** on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property, or any right in any immovable, affected by the condition or damage;

**(b)** during the period of a stay of the order granted, on application made within the time specified in the order referred to in paragraph (a), within ten days after the order is made or within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, by

**(i)** the court or body having jurisdiction under the law pursuant to which the order was made to enable the trustee to contest the order, or

**(ii)** the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

**(c)** if the trustee had, before the order was made, abandoned or renounced or been divested of any interest in any real property, or any right in any immovable, affected by the condition or damage.

**Stay may be granted**

**(5)** The court may grant a stay of the order referred to in subsection (4) on such notice and for such period as the court deems necessary for the purpose of enabling the trustee to assess the economic viability of complying with the order.

**Costs for remedying not costs of administration**

**(6)** If the trustee has abandoned or renounced any interest in any real property, or any right in any immovable, affected by the environmental condition or environmental damage, claims for costs of remedying the condition or damage shall not rank as costs of administration.

**Priority of claims**

**(7)** Any claim by Her Majesty in right of Canada or a province against the debtor in a bankruptcy, proposal or receivership for costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor is secured by security on the real property or immovable affected by the environmental condition or environmental damage and on any other real property or immovable of the debtor that is

contiguous with that real property or immovable and that is related to the activity that caused the environmental condition or environmental damage, and the security

**(a)** is enforceable in accordance with the law of the jurisdiction in which the real property or immovable is located, in the same way as a mortgage, hypothec or other security on real property or immovables; and

**(b)** ranks above any other claim, right, charge or security against the property, despite any other provision of this Act or anything in any other federal or provincial law.

**Claim for clean-up costs**

**(8)** Despite subsection 121(1), a claim against a debtor in a bankruptcy or proposal for the costs of remedying any environmental condition or environmental damage affecting real property or an immovable of the debtor shall be a provable claim, whether the condition arose or the damage occurred before or after the date of the filing of the proposal or the date of the bankruptcy.

**ORPHAN WELL ASSOCIATION and ALBERTA ENERGY REGULATOR**
APPELLANTS
(Appellants)

**-and-**

**GRANT THORNTON LIMITED**
RESPONDENT
(Respondent)

S.E.M.C.C. File Number: 03-02-2019

SUPREME ENVIRONMENTAL MOOT
COURT OF CANADA

# FACTUM OF THE RESPONDENT GRANT THORNTON LIMITED

**TEAM #2019-08**

**Tina Northrup**
**Riley Weyman**

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Document #: 1488571