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# Court of Appeal confirms QB decision that coalbed methane forms part of the natural gas title and not the coal title

**By Nigel Bankes**

**Case Considered:**

*Encana Corporation v Devon Canada Corporation*, 2012 ABCA 271, aff'g 2011 ABQB 431.

The Court of Appeal in a unanimous memorandum of judgment (Justices McFadyen, O'Brien and O'Ferrall) has affirmed Justice Kent's decision at trial in a case dealing with section 10.1 of the *Mines and Minerals Act*, RSA 2000, c M-17 (as am by SA 2010, c 20) (*MMA*). That section declared that coalbed methane (CBM) is and always has been natural gas. Justice Kent applied the new section 10.1 to grant summary judgement in competing actions brought by the coal owners and the natural gas lessees seeking declaratory relief as to the ownership of CBM in certain lands. The actions in question had all been commenced before the amendment was introduced and passed. The Court held that section 10.1 was a complete answer to the competing claims and concluded that the natural gas lessees were entitled to a declaration that the coalbed methane had been granted to them under the terms of their natural gas leases. I blogged on the trial judgment here.

The Court of Appeal in short reasons affirmed both the result and the reasons noting at paragraph 16 that:

> Section 10.1(1) of the *Mines and Minerals Act* is clear. It declares that coalbed methane is and always has been natural gas. And the effect of section 10.1(2) is that unless there is a specific exclusion, exception or reservation of coalbed methane in the natural gas lease, the natural gas lessee has the right to recover the coalbed methane. And whether or not there had been a specific exclusion, exception or reservation of the coalbed methane turns on whether or not coalbed methane was expressly excluded, excepted or reserved in the natural gas lease, not on the intentions of the parties when the lease was granted. So no trial of that issue is required.

In doing so the Court also confirmed (at para 18) that this section of the *MMA* applies to private mineral rights just as much as to Crown mineral rights:

> … when one looks at the context and examines the words of subsections (2) and (3) of section 10.1, it is clear that section 10.1 was intended to apply to freehold mines and minerals. The use of phrases such as "the owner of the title to natural

gas", and "the owner of the title to coal" indicate that freehold mines and minerals were contemplated. Owners of title to coal or natural gas includes holders of certificates of title issued by the province's two Land Registration District Offices (Land Titles). Such certificates of title are issued for freehold mines and minerals. So the Legislature must have intended the amendment to apply to freehold mines and minerals as well as Crown mines and minerals. The context not only "permits" such an interpretation; it demands it.