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Bitcoin Real Property Law

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Decision Commented On: *Flowers v Persist Oil and Gas Inc*, 2026 ABCA 172 (CanLII)

In this decision, Alberta's Court of Appeal has confirmed Justice Christopher Rickard's decision of the Court of King's Bench on this matter. 2025 ABKB 142 (CanLII). Both levels of court concluded that neither a surface lease nor a right of entry order provide the operator with the necessary proprietary authorization to run a bitcoin mining operation on the leased lands using natural gas from a compressor located on the lands and licensed by the Alberta Energy Regulator (AER). I refer readers to my ABlawg post on Justice Rickard's decision for a more detailed examination of the background as well as two related decisions of Alberta's Land and Property Rights Tribunal.

The decisions of both levels of court largely turn on the interpretation of the granting clause of the surface lease. That clause provided as follows:

> …to be held by the Lessee as tenant…for any and all purposes and uses as may be necessary for the exploration, development and production of oil, gas, related hydrocarbons or substances produced in association therewith, including the right to lay a pipeline or pipelines, construct and operate a sweet natural gas compressor facility, remediation and reclamation. (ABCA at para 32).

While the appellant, Persist, sought to argue that "bitcoin mining is necessary … to avoid shutting in natural gas production when natural gas prices are low" and that "by extracting natural gas, developing it into electricity to power data processors, and producing bitcoin for value, it is acting within the purpose of the surface rights lease" (at paras 33 and 35), the Court of Appeal was not convinced that the trial judge had erred in rejecting these arguments:

> The chambers judge was mindful of the appellant's arguments. He did not err in interpreting the words of the surface rights lease in their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the lease. Given that bitcoin mining only began in 2009, it cannot be inferred that the wording of the lease, which dates back to 1999, was intended to contemplate the use proposed by the appellant. The lease language is certainly broad enough to encompass changes in the industry, such as novel enhanced hydrocarbon recovery techniques or new technology for the separation or compression of gas. But it is limited to purposes *necessary* for the exploration, development and production of hydrocarbons or

> substances produced in association therewith. The bitcoin mining operation is not an industry improvement or a modification to processes or equipment that is necessary for the exploration, development and production of hydrocarbons. (ABCA at para 36)

And even if Persist could claim to be in occupation of the lands in the later period under the terms of a right of entry order rather than under the terms of a surface lease (a matter I discuss in more detail in my earlier post), the Court seems to have been of the view that Persist could still not claim to be engaged in an authorized activity:

> The Right of Entry order simply granted the appellant the right to access and operate the compressor station. The Land and Property Rights Tribunal expressly stated it had no jurisdiction to address the bitcoin mining issue. Its order cannot be interpreted as a tacit approval of the bitcoin mining activity as being "incidental" to operating the compressor station. The operations are distinct undertakings, differing in purpose and character. (ABCA at para 37)

Neither could the appellant claim any support for its position on the basis of the AER authorization that it held for the compressor, or the authorization that it had (belatedly) acquired from the Alberta Utilities Commission for the generating units that it had brought on to the land. These authorizations and associated regulatory guidance were not relevant to the interpretation of the lease, and, in my view, dealt with regulatory matters rather than matters of proprietary entitlement.

Finally, the Court agreed that this was an appropriate case for a permanent injunction.

Conclusion

This decision may have involved a novel point of law but at the end of the day it is simply a lease interpretation decision. Parties to a surface lease are free to provide an operator with a broader set of rights than the rights associated with exploring for, extracting and processing hydrocarbons, but unless and until they do so, an operator has no proprietary authority to engage in generating electricity for data processing activities that have no connection with hydrocarbon producing activities. Furthermore, since a right of entry order is necessarily limited by the governing legislation (the *Surface Rights Act*, RSA 2000, c S-24) it must follow, as I argued in my post on Justice Rickard's decision, that neither could such an order authorize bitcoin mining activities.

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