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# Joint Responsibility Under Alberta's *Mines and Minerals Act*

**By:** Nigel Bankes

**Decisions commented on:** *Terra Energy Corp (Re)*, 2023 ABKB 236 (CanLII); *Alberta (Energy and Minerals) v Spartan Delta Corp*, 2026 ABCA 214 (CanLII); *Alberta (Energy and Minerals) v Canadian Natural Resources Limited*, 2026 ABCA 213 (CanLII)

Alberta's *Mines and Minerals Act,* RSA 2000, c M-17 (*MMA*) refers to the concept of joint responsibility in two places. Both references were added to the *MMA* in 2003, see SA 2003, c 18. This post reviews three cases that consider these provisions of the *MMA*: *Terra Energy Corp (Re)*, 2023 ABKB 236 (CanLII) (*Terra Energy*), *Alberta (Energy and Minerals) v Spartan Delta Corp*, 2026 ABCA 214 (CanLII) (*Spartan Delta*), and *Alberta (Energy and Minerals) v Canadian Natural Resources Limited*, 2026 ABCA 213 (CanLII) (*CNRL*).

Section 20 of the *MMA* in Part 1, Administration, provides the first reference to joint responsibility. This reference addresses the scenario in which the registration records of the Department of Energy and Minerals show that a Crown agreement (e.g. a petroleum or natural gas lease or licence) is held by two or more parties – in other words the common scenario in which a Crown lease is held, for example, by A Co, B Co, and C Co as tenants in common as to some undivided percentage interest together equalling 100%. To be clear, the law of co-ownership applies not only to an estate in fee simple but also to a leasehold estate and even a leasehold estate of a profit a prendre (e.g. a petroleum and natural gas lease: *Berkheiser v Berkheiser and Glaister*, 1957 CanLII 56 (SCC), [1957] SCR 387). I observe that other parties may hold a beneficial unregistered interest in such a lease, as may be the case, for example, where A Co has farmed out its interest to Z Co who may have earned an interest in certain formations within the lease but has yet to get on title. Thus, while the Department's register may reflect the state of the legal interests in the lease, others may have equitable interests in the lease that are not just unregistered but actually unregistrable because of the narrow language of the statute: *St. Lawrence Petroleum Limited et al. v Bailey Selburn Oil & Gas Ltd. et al.*, 1963 CanLII 76 (SCC), [1963] SCR 482.

Here is what s 20 has to say about joint responsibility, at least as between the lessees of registered undivided interests in a Crown lease or agreement:

> 20 (2.1) Where 2 or more persons are recorded with the Department as lessees of an agreement,
> (a) those lessees in relation to the Crown are jointly responsible for the obligations and liabilities that arise under that agreement, notwithstanding that the agreement was issued before, on or after the coming into force of this subsection, and

> (b) a judgment in favour of the Crown against one or more of those lessees or a release by the Crown in favour of one or more of those lessees does not preclude the Crown from obtaining judgment against the other lessees in the same or a separate proceeding.

The second reference in the *MMA* is s 91.1 in Part 6 dealing with the registration of transfers and security interests. The provision in full, including its heading, reads as follows:

> Obligations to run with agreement, etc.
> 91.1(1) Where a transfer is registered under section 91 with respect to the whole of an agreement, a specified undivided interest in an agreement or a part of the location contained in an agreement,
> (a) any obligation or liability arising under the agreement that existed before the transfer was registered continues, on and after the registration of the transfer, to run with the agreement, interest or part of the location transferred, and
> (b) the transferee and the transferor and any other person recorded with the Department as a lessee of the agreement prior to the transfer are jointly responsible for any obligation or liability referred to in clause (a).
>
> (2) With respect to any obligation or liability referred to in subsection (1),
> (a) any judgment in favour of the Crown in respect of that obligation or liability against one or more of the persons referred to in subsection (1)(b), or
> (b) any release by the Crown in respect of that obligation or liability in favour of one or more of the persons referred to in subsection (1)(b)
> does not preclude the Crown from obtaining judgment against any of the other persons referred to in subsection (1)(b) in the same or a separate proceeding.

In sum, s 20(2.1) is concerned with concurrent co-ownership of an agreement (lease) while s 91.1 is concerned with successor ownership considerations.

This post first summarizes each of the three judgments, beginning with *Terra Energy* before examining the more recent *Spartan Delta* and *CNRL* decisions of the Court of Appeal and then offering some commentary. *Spartan Delta* was handed down the same day as *CNRL*. I deal with *Spartan Delta* before *CNRL* even though the *CNRL* decision offers a more detailed consideration of s 20(2.1) because the first instance judgment in *Spartan Delta* significantly predates that in *CNRL*.

***Terra Energy***

Justice Barbara Romaine's decision in *Terra Energy* is concerned with s 91.1 of the *MMA*, the successor ownership provision. Terra Energy sold certain oil and gas assets to Enercapita Energy Ltd (Enercapita) in 2015. The assets included Crown petroleum and natural gas leases. The Crown registered these lease transfers under s 91(1) of the *MMA* shortly after the conveyance. At the time there were no royalty arrears associated with these assets. Alberta's natural gas royalty rules allow a natural gas producer to claim an allowance for processing costs (a gas cost allowance (GCA)) as part of the royalty calculations. As Justice Romaine summarized:

> Each month, the Crown's share of gas costs allowance is deducted from the Crown royalty payable that month. Every year, these estimated amounts are adjusted from estimates to actual amounts. (*Terra Energy* at para 8)

Terra Energy entered into receivership and was subsequently petitioned into bankruptcy in 2016. The Crown submitted a proof of claim in the amount of $1.8 million and "[i]t appears from the statement attached to the claim that the Crown claim first arose in June 2016, after the transfer and registration of leases had been approved in November, 2015" (*Terra Energy* at para 11). Royalty accounts are subject to audit up to five years after the year for which royalties are payable. While Terra was in bankruptcy, Alberta Energy performed four separate audits of Terra's GCA filings for the period 2011 – 2014. Largely based on Terra's failure to substantiate its claims to GCA (Alberta Energy's inquiries met with no response since Terra no longer had any staff), Alberta Energy disallowed Terra's GCA claims in their entirety.

In December 2017, Alberta Energy copied Enercapita on a letter to Terra informing Terra of royalty arrears of some $3.2 million. This was the first time that Enercapita heard that there was a problem and that Alberta Energy might be seeking recovery from it.

To cut to the chase, despite Enercapita's considerable and successful efforts to respond to Alberta Energy's request for documentation to support Terra's GCA claims, Alberta Energy continued to insist that Enercapita was liable for Terra's royalty arrears. At the same time, Alberta Energy failed to respond constructively to Enercapita's repeated requests to substantiate and itemize the claim of arrears. Accordingly, Enercapita renewed its application for declarations as to its non-liability for Terra's royalty arrears.

It is useful at this point to reproduce again s 91.1(1)(a) of the *MMA*:

> (a) <u>any obligation or liability arising under the agreement that existed before the transfer was registered continues</u>, on and after the registration of the transfer, to run with the agreement, <u>interest or part of the location transferred</u>,.(emphasis added by Justice Romaine, *Terra Energy* at para 60)

The principal issue for Justice Romaine was whether the claimed royalty arrears could be said to be an existing obligation or liability when, at the time of the transfer, there were no arrears and where the arrears only came to light after the transfers were registered, and as a result of Alberta Energy's audits that systematically zeroed out all of Terra's GCA claims.

On the principal issue, Justice Romaine effectively concluded that while the obligation to pay royalties might have been an existing obligation, that obligation was only an obligation to pay royalties net of any allowable deductions:

> While an obligation to pay Crown royalties may arise upon extraction of the mineral in question, that obligation is to pay royalties net of the Crown's share of allowable expenses of production. The Crown's position that the obligation to pay royalties always existed and just had to be properly identified fails to take into account that the amount of the obligation or liability depends a) upon the gross amount of royalties, and b) allowable deductions that

> ensure that the Crown pays the costs of production of its royalty share. In the existing system, that obligation is identified by producers' filings with respect to production and allowable deductions that appear to stand unchallenged unless the Crown decides to conduct an audit. The "obligation or liability" that must exist before section 91.1 applies is not merely the gas royalties that may be payable to the Crown, but such royalties net of allowable deductions.
>
> This interpretation of section 91.1 is not inconsistent with the object of the MMA, to see that Albertans benefit from resource extraction in the form of royalties paid to the provincial Crown, net of the Crown's share of allowable expenses. <u>This object can be attained by ensuring that claims for cost allowances that would reduce the Crown's royalty share of gas and gas products are reviewed and/or audited before the Crown consents to a transfer.</u> (*Terra Energy*, paras 71 & 72, emphasis added)

While I can agree with the result, it seems impractical to demand that the Crown must complete a pre-transfer audit before it can rely on its power to reach forward to attach the transferee. If the Crown always did that, the Crown would hardly need the statutorily conferred power to pursue the transferee for the transferor's liabilities. It seems better to explain the result here on administrative law grounds to the effect that the Minister could not reasonably conclude that they could zero out all of the claimed GCAs simply because a defunct royalty client failed to respond to inquiries. Such an approach might have allowed justice to be done in the particular circumstances of the case without gutting the provision, and the extended audit rights of the Crown, of any real meaning.

Perhaps surprisingly, the Crown does not seem to have appealed this aspect of the decision. Accordingly, *Terra Energy* stands for the broad proposition that a Crown royalty claim based upon a post-transfer audit in relation to pre-transfer production is not an existing claim within the meaning of s 91.1 of the *MMA*. I note that the Court of Appeal expressly declined to comment on the substance of the *Terra Energy* decision in the *Spartan Delta* case discussed below: see *Spartan Delta* CA, at paras 48 and 64.

The second ground for Justice Romaine's decision, and in the alternative (at para 108), was that the Crown erred in allocating royalty arrears to Enercapita that were not associated with the assets that Enercapita had acquired from Terra. This is undoubtedly a correct interpretation of the legislation. As Justice Romaine noted at different points in her judgment:

> Section 91.1 does not make Enercapita jointly liable for all of Terra's obligations or liabilities: at most, Enercapita is liable for those liabilities arising under the purchase and sale agreement relating to the assets transferred. (*Terra Energy* at para 62)
>
> … section 91.1(a) of the *MMA* provides that the obligation "arising under the agreement", being the purchase and sale agreement between Terra and Enercapita, "continues... to run with the agreement, interest or part of the location transferred." Thus, the obligation set out under section 91.1(a) arising from the transfer only runs with the interest or location transferred. There is no support under section 91.1(a) for the approach taken by Alberta Energy in allocating the Terra arrears to Enercapita. (*Terra Energy* at para 98)

However, rather than sending the matter back to the Department for what might have been a re-evaluation under this alternative line of reasoning, Justice Romaine went further and concluded that:

> … even if I am incorrect with respect to the scope of section 91.1, Alberta Energy has not proved on a balance of probabilities that Enercapita owes it any amount with respect to the alleged Terra arrears. (*Terra Energy* at para 109)

Perhaps this suggests the value of a litigation strategy of seeking a declaration as to non-liability in a civil suit rather than commencing an application for judicial review of the Crown's royalty determination. If the latter course were followed here, success for Enercapita would have resulted in remitting the matter to the Department to have it make a new decision that accorded with the legislation. Regardless, one can only agree with Justice Romaine's summative paragraph:

> It is understandable that, given the dire situation in Alberta with respect to orphan well recovery costs, Alberta Energy may be frustrated by its inability to collect royalty arrears, to the extent that they exist, from a now insolvent, and in fact non-existent entity. However, Alberta Energy can only collect arrears in accordance with its legislated authority. Alberta Energy in effect created these arrears after registering the transfer by zeroing out Terra's claims for gas cost allowance because it did not receive information from a company that it knew was in receivership and bankruptcy and therefore did not have the employees who could respond to its questions. It now seeks to recover the majority of those arrears from a transferee that had no knowledge of the audits and on the basis of wells that Enercapita did not acquire. Despite the difficulty in doing so, Enercapita apparently provided Alberta Energy with substantial information on the cost allocation claims. Enercapita is entitled to adequate information to evaluate the alleged debt. (*Terra Energy*, at para 109)

***Spartan Delta***

The *Spartan Delta* case arose out of a *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (*CCAA*) proceeding involving the insolvency of Bellatrix Exploration Ltd. As part of the *CCAA* process, Spartan Delta acquired most of Bellatrix's assets including Bellatrix's working interests in Crown leases. The court approved the transaction and issued a Vesting Order. Subsequent thereto, the Crown raised a claim for royalty arrears and sought to recover those arrears from Bellatrix's (now Spartan Delta's) fellow working interest owners (i.e. tenants in common) in those Crown leases (the Court of Appeal refers to these parties as Spartan Delta's co-lessees, including CNRL, and I will adopt that usage here.) The Crown's unpaid royalty claims covered both the pre-filing period (i.e. the period prior to Bellatrix filing for *CCAA* protection) and the post-filing period (i.e. the period from filing until the assets vested in Spartan Delta). It appears that the Crown did not proceed against Spartan Delta (and here referring to the post-claim period) because the Crown had indicated in writing to the receiver that a royalty deposit that it had on hand would be adequate to recover any arrears for this period and that "Bellatrix will not be responsible to pay any debt to the Crown and you may proceed with the closing of the estate" (*Spartan Delta*, CA at para 56). As such, the *Spartan Delta* decision is principally concerned with s 20 of the *MMA* (concurrent interests) rather than s 90.1 (successive interests).

Relying on the terms of the Vesting Order which permitted it to seek further direction from the Court, Spartan Delta sought an order directing that the Crown be precluded from collecting any royalty arrears from Bellatrix's/Spartan Delta's co-lessees. The Court of Appeal explained Spartan Delta's interest in seeking the order as follows: "Spartan is concerned that if Alberta Energy were to proceed with its claims against the co-lessees, those co-lessees may pursue it for any Bellatrix royalties they may be required to pay to Alberta Energy" (*Spartan Delta*, CA at para 57). The Monitor appointed under the *CCAA* proceedings and CNRL supported Spartan Delta. Justice John J. Gill in unreported reasons for decision (March 14, 2025) granted the order sought and the Crown appealed. For a transcript of the unreported reasons for decision see here.

The Court of Appeal (Justices Jane Fagnan, Tamara Friesen and Karan Shaner - for both this case and the accompanying *CNRL case*) affirmed. In doing so the Court dealt separately with pre-filing royalty arrears and any post-filing arrears.

The Court offered its most sustained comment on s 20(2.1) under the pre-filing heading, noting that s 20(2.1) describes the liability of concurrent lessees as joint "and therefore indivisible" (*Spartan Delta*, CA at para 36) which must mean that if the Crown compromises its royalty claim with one co-lessee, it compromises that claim for the benefit of all co-lessees.

This led the Court to address two distinct issues. First, did the terms of the *CCAA* Vesting Order serve to compromise the Crown's royalty claim in relation to Bellatrix's liability as a co-lessee? And second, if it did, could the Crown still claim that it could pursue Bellatrix's co-lessees by virtue of s 20(2.1)(b), which effectively serves as an exception to the proposition that a joint liability is indivisible?

As to the first issue, the Court held that the express language of paragraphs 4 and 11 of the Vesting Order served to bar the Crown's claim against Bellatrix. Both clauses expressly referenced royalties. Paragraph 4, the vesting clause, makes the vesting "free and clear" of all interests including royalties other than permitted encumbrances. Paragraph 11 expressly bars and estops any claims in relation to the assets, including royalties. And neither could the Crown's royalty claim qualify as a permitted encumbrance as defined in the Order. In sum, the Vesting Order barred the Crown's claim against Bellatrix.

As to the second issue, the Court had to decide whether the Vesting Order qualified as a "judgment" or a "release" within the meaning of s 20(2.1)(b) so as to allow the Crown to proceed against Bellatrix's co-owners notwithstanding the indivisible nature of the obligation. Not so said the Court. A Vesting Order is not a release and does not contain the word "release", nor does it purport to reflect terms consented to by Alberta Energy (*Spartan Delta*, CA at para 38). The Court dealt even more summarily with the other possibility, stating simply that a Vesting Order "is not a judgment in favour of the Crown …" (*Spartan Delta*, CA at para 37).

The Court's analysis in relation to post-filing royalty arrears was similar. Under the Purchase and Sale Agreement approved by the Court there was an $8.5 million holdback to cover liabilities that might arise during this period. This fund might have been used, amongst other things, to cover the Crown's royalty claim until Spartan Delta assumed ownership of the assets (*Spartan Delta*, CA at paras 58 and 64) but, as noted above, the Crown effectively renounced any claim against this fund when it indicated to the Monitor that it was protected by the royalty deposit that it had on hand (*Spartan Delta*, CA at para 56). And having done so, the Crown could not proceed against the co-lessees of Bellatrix:

> … co-lessees are jointly liable under s 20(2.1), meaning the claim against them is indivisible. Where the liability of one jointly liable co-lessee has been extinguished, there is no claim available against the other co-lessees except where the Crown has obtained a judgment in its favour or in the case of a release. The Crown did not obtain a judgment, nor does Alberta Energy argue it retained the ability to pursue co-lessees for Post-Filing royalty arrears based on a release. (*Spartan Delta*, CA at para 61)

The Court also agreed with Justice Gill who had concluded that this interpretation was consistent with the finality and single-proceeding principles embodied within the *CCAA*, and supported by authorities such as *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41.

***CNRL***

Much like *Spartan Delta*, the *CNRL* decision arises out of an insolvency but in this case in the context of a Notice of Intention (NOI) to make a proposal for restructuring under s 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*) and this time in relation to Blue Sky Resources Limited (Blue Sky). The case also involves an appeal of another unreported judgment (this time that of Justice Michel Bourque, January 6, 2026; for the transcript of the reasons see here).

On September 23, 2025, Alberta Energy sent a demand letter to Blue Sky indicating a royalty arrears balance of just under $1.9 million. The following day Blue Sky filed its NOI, and just one day later (September 25, 2025) Alberta Energy issued a leaseholder recourse default letter to Blue Sky copying numerous other oil and gas companies, including CNRL, presumably on the basis that these addressees were co-lessees with Blue Sky on different Crown leases. CNRL responded by seeking a declaration that the default letter demand for payment constituted a claim provable in bankruptcy against Blue Sky, or the exercise of a remedy against Blue Sky's property, which Alberta Energy must first advance through Blue Sky's restructuring proceedings before seeking recovery from any lessee noted in the default letter. CNRL also sought a declaration that the stay under s 69 of the *BIA* precluded Alberta Energy from collecting any payments from Blue Sky's co-lessees (*CNRL*, CA at para 12). Meanwhile, CNRL and others remitted the amounts claimed by Alberta Energy under protest, presumably as Justice Bourque noted because of the Crown's extensive powers over lessees (*CNRL*, KB at 2, lines 35 – 40).

Justice Bourque concluded that the Crown's claim for unpaid royalties was a claim provable in bankruptcy and that therefore the Crown must pursue its claim within the bankruptcy proceedings. Any effort to pursue such a claim outside those proceedings would be inconsistent with the statutory stay provisions of s 69(1) of the *BIA*. Justice Bourque supported that conclusion with three additional observations. First, while the Crown might have a claim provable in bankruptcy, a co-lessee who paid the Crown royalty might not be in such a position and thus might only be able to recover as an unsecured creditor "sharing in what might be left over after the conclusion of the insolvency proceedings, which might be cents on the dollar if anything" (*CNRL*, KB at 4, lines

5 – 7). Second, if the Crown could pursue its claim against co-lessees, then such co-lessees might see the need to participate in the NOI proceedings, at significant cost and further complicating the proceedings. Third, if the Crown were not made whole in the *BIA* proceedings, the Crown would still be able to pursue a claim for the balance "through the section 20(2.1) mechanism" in the *MMA* (*CNRL*, KB at 5, lines 1 – 2).

In addition to granting the stay, Justice Bourque also ordered Alberta Energy to provide each co-lessee with information identifying the Crown leases with royalty arrears, the amount claimed against each co-lessee, and the period during which the arrears accrued (*CNRL*, KB at 5, lines 38 – 41).

The Crown appealed. The Court of Appeal largely affirmed.

The Court of Appeal structured its judgment under two main headings: (A) What is the nature of Alberta Energy's claims against Blue Sky's co-lessees? And (B) Did the chambers justice err in finding Alberta Energy's claims against the lessees were subject to a stay?

Under the first heading the Court offered a more extensive discussion of the "joint liability" language of s 20(2.1) of the *MMA* than that offered in the contemporaneous decision in *Spartan Delta*. The Court concluded that the choice of "joint liability" language rather than "joint and several liability" must be taken to be deliberate. In the case of a joint liability or promise "there is only one obligation; joint liability is not divisible. Because there is only one promise being made by two or more promisors, the release of one joint promisor serves as a release of the other joint promisors, even if the full judgment is not satisfied.... As the liability is indivisible, staying or addressing the debt with respect to one promisor stays or addresses the debt with respect to all" (*CNRL*, CA at para 27). Section 20(2.1)(b) modifies the consequences of joint liability somewhat:

> … by permitting the Crown to obtain judgment against co-lessees notwithstanding a previous judgment for, or release of, an individual lessee. It does not permit the Crown to obtain judgment against a co-lessee in other situations, for example, where a vesting order in insolvency proceedings bars claims against a co-lessee. (*CNRL*, CA at para 41)

Under the second heading the Court began by confirming that the royalty arrears constituted a claim provable in bankruptcy and that s 69(1)(a) of the *BIA* automatically stays remedies against the insolvent person. Furthermore, the effect of the joint liability language of s 20(2.1) is to extend the benefit of that stay to the joint lessees. The Court reasoned as follows:

> Blue Sky's co-lessees' liability for the royalty arrears pursuant to s 20(2.1) of the *MMA* is joint, and therefore indivisible. As such, staying the claim with respect to one person (Blue Sky) stays the claim with respect to all persons (the co-lessees). The royalty arrears are stayed with respect to Blue Sky as a "claim provable in bankruptcy"; it follows that the claims are also stayed as against all co-lessees. (*CNRL*, CA at para 60)

The Court then turned to a discussion of different ownership scenarios to assess whether all claims against third parties should be subject to the stay. I confess that I find this part of the judgment somewhat difficult to follow, but the Court seems to identify the following scenarios:

1. A scenario in which Blue Sky is a Crown royalty client with a registered interest in a lease.
2. A scenario in which Blue Sky is a Crown royalty client with a working interest in a lease but without a registered interest.
3. A scenario in which Blue Sky is a Crown royalty client for a lease but without any working interest in the lease, registered or unregistered. (*CNRL*, CA at paras 61, 66 & 75)

While these are all possible scenarios, the Court acknowledged that there was no clear evidence before Justice Bourque, or the Court, as to which leases fell into which scenario. Accordingly, it was necessary to allow the appeal in part and return the matter to King's Bench "for a new hearing with respect to whether a stay is warranted in the ongoing insolvency proceedings in relation to any remaining Crown claims for royalty arrears against parties listed in the Default Letter where Blue Sky and the party associated with particular arrears are not co-lessees on the lease to which the arrears pertain." (*CNRL*, CA at para 84, disposition)

The more extended reasons supporting this conclusion were as follows:

> The respondent argues that Blue Sky's working interest constituted an ownership in the leases. We decline to address this argument. Nothing in the chambers justice's reasons would suggest he made such a determination or based his stay decision on that premise. Nor did he address the respondent's argument that Blue Sky as a party to "some contract governing [the] well" (such as a joint operating agreement) might be able to recover "cure costs" on assignment of the agreement.
>
> We note the respondent's application sought a declaration regarding the claims against all leaseholders noted on the Default Letter. Alberta Energy had declined to provide information to the respondent that would likely have been of some assistance to the chambers justice in enabling him to draw distinctions between those situations in which Blue Sky was a lessee and those in which it was not. He granted the respondent's request for disclosure, ordering that each co-lessee be provided information identifying the Crown lease with royalty arrears and the amount of the arrears claimed against each co-lessee. That disclosure may enable the parties to advance their arguments before the chambers justice with more particularity. (*CNRL*, CA at paras 81 – 82)

In sum, the stay was confirmed with respect to category 1 (above) and perhaps also with respect to category 2. I say "perhaps" because there must be an argument to the effect that s 20(2.1) only applies to registered lessees. It will be interesting to see therefore whether any re-hearing is confined to category 3 scenarios and, if so, the reasoning that supports such an approach.

**Commentary**

The first point to make is that each of these decisions is necessarily significant, if only because 80% of minerals in Alberta, including oil and gas, are owned by the Crown. Hence, any decision dealing with the interpretation of the Crown's principal proprietary and royalty statute, the *MMA,* will be consequential for a large number of players in the oil and gas industry in Alberta. It is therefore surprising that neither of the first instance judgments were reported. Justice Bourque's judgment is particularly illuminating.

Second, while I am all for the Crown collecting its royalty share of a publicly owned resource (see my first ever post on ABlawg nearly 20 years ago, here), the cases do suggest a pattern of high-handed behaviour on the part of the Crown and an uncooperative refusal to disclose the information necessary for parties to assess the basis of the Crown's claims. For an additional Crown royalty case exhibiting similar behaviour see *Taylor Processing Inc v Alberta (Minister of Energy),* 2023 ABKB 64 (CanLII).

Third, both the *Spartan Delta* and *CNRL* decisions confirm that joint responsibility connotes a single indivisible promise or obligation. It seems strange that the Crown adopted this language rather than the language of "joint and several" but, as the Court notes in *CNRL,* there are plenty of examples on the statute book of provisions that use "joint and several" and the Hansard record demonstrates that the Minister introducing the amendments consistently referenced joint liability rather than joint and several (*CNRL*, CA at para 40.) In light of this interpretation, it will be interesting to see if the government introduces amendments in the next session (fall 2026).

Fourth, all three cases, in one way or another, suggest that the Crown is always in a position to protect itself from unpaid royalties because of its authority to refuse consent to transfers. I am not convinced by this line of argument. I say this for two reasons. First, the cases conflate the power to withhold consent to registration with the power to withhold consent to a transfer. There is no general requirement in the *MMA* for consent to a transfer of an undivided interest in a lease (there is a specific consent requirement in relation to sequestration agreements (*MMA*, s 118) and with respect to a transfer of part of a location, see the *Mines and Minerals Administration Regulation*, Alta Reg 262/1997, s 12, but not with respect to the transfer of an undivided interest in an entire agreement). Similarly, there is no general provision in the *MMA* that makes a transfer unenforceable without Crown consent. True, in the absence of registration, the transferee under a purchase and sale agreement does not have a *legal* interest in the lease, but it will have an equitable interest in the lease. I note that the judgments frequently conflate these two issues: see for example, *Spartan Delta,* CA at para 34: "Sections s 18(2) of the *MMA* and s 5(1)(g) of the Crown Minerals Registration Regulation, AR 264/1997 permit Alberta Energy to refuse the transfer of a lease where arrears are owing under the lease." See also *CNRL, CA* at para 76.

Second, while the Court of Appeal in *Spartan Delta* relied on the standard form Vesting Order (see s 4 as quoted in *Spartan Delta*, CA at para 41) as requiring the approval of Alberta Energy (see *Spartan Delta*, CA at para 50, and also at para 36), this too is an unfortunate conflation. In this instance the Court conflated the different roles of Alberta Energy (now Alberta Energy and Minerals) and that of the Albert Energy Regulator (AER), and the distinction between Crown leases and regulatory licences. The Vesting Order provides that vesting is subject to approval, by the AER, of the transfer of licences, permits, approvals, etc. It does not require the approval of Alberta Energy to the transfer of Crown agreements or leases. Alberta Energy and the AER have different functions. Alberta Energy is the guardian of the Crown's property and royalty interests, while the AER's mandate is that of the day-to-day regulator and licensor of the industry (e.g. well, pipeline, facility licences or permits, and abandonment and reclamation obligations).

Finally, it will be important to follow the limited new hearing of the CNRL matter in King's Bench, both to determine the scope of that new hearing and to understand the result. And let's hope that, if the matter does proceed, any judgment is posted to CanLII. But whether any of this happens remains to be seen. The receiver has now disposed of Blue Sky's assets so these proceedings may now be moot: see the receiver's webpage.

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