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Unlawful Production and Restitutionary Damages

By: Nigel Bankes

Case Commented On: *Signalta Resources Limited v Canadian Natural Resources Limited*, 2025 ABCA 306 (CanLII) and *Signalta Resources Limited v Canadian Natural Resources Limited*, 2023 ABKB 108 (CanLII).

There are two principal substantive issues in this important unanimous decision of the Alberta Court of Appeal (referred to as ABCA decision). The first issue relates to the rules pertaining to the right of a Crown oil sands lessee (Canadian Natural Resources Limited (CNRL)) to produce gas cap (or non-solution) gas in the course of producing oil sands (or bitumen) when the Crown has leased the natural gas rights in the same location (and indeed the same formation) to another party (Signalta). The second substantive issue relates to the legal consequences of the unlawful production of somebody else's natural gas, specifically the assessment of damages for such unlawful production.

The decision also engages with the applicable rules for the assessment of expert evidence. I did not post on ABlawg about Justice Jane Sidnell's discussion of these issues at trial (see *Signalta Resources Limited v Canadian Natural Resources Limited*, 2023 ABKB 108) (KB decision) and I will not discuss them further here, but I highly recommend her treatment of the expert evidence issues; good reading for both trial lawyers and those thinking of accepting an expert retainer.

This post focuses on the two principal substantive issues outlined above as discussed in both Justice Sidnell's judgment and that of the Court of Appeal. But before dealing with those issues it is necessary to grapple with a technical issue, namely the threshold question of whether CNRL, as a matter of fact, was a position to produce any of Signalta's gas cap or non-solution gas (the two terms are interchangeable both in the judgments and in this comment).

Did CNRL Produce Gas Cap Gas?

Since it was clear law (see *Borys v CPR and Imperial Oil Ltd*, 1952 CanLII 337 (AB CA), [1952] 3 DLR 218 (*Borys*), aff'd 1953 CanLII 414 (UK JCPC), [1953] 2 DLR 65) that a petroleum lessee (or in this case a bitumen or oil sands lessee) could produce gas in solution in the bitumen at original reservoir conditions, as well as gas that evolved from the petroleum or bitumen (see *Anderson v Amoco Canada Oil and Gas*, 2004 SCC 49), a principal technical issue at trial that occasioned the introduction of significant expert evidence was the question of whether CNRL's wells could produce any gas other than solution gas.

CNRL put the issue this way:

> CNRL maintained that any gas that was produced must have been solution gas that came from, or "exsolved" from, the bitumen because there was an impermeable barrier in the Waseca Formation separating the bitumen from the non-solution gas pools. If the impermeable barrier existed as posited by CNRL, then non-solution gas could not have come into communication with the bitumen and any gas produced was solution gas belonging to CNRL. (ABCA decision at para 5)

Signalta agreed that "the Waseca Formation was comprised of two informal members, the Upper Waseca and the Lower Waseca", but its experts "opined that no such impermeable membrane existed such that non-solution gas could migrate throughout the Waseca Formation, particularly given CNRL's production and operations." (ABCA decision at para 15) Justice Sidnell at trial largely accepted Signalta's position to the effect that:

> (a) the two gas caps described by Signalta's witnesses at trial, referred to as the Main Gas Cap and the NW Gas Cap, existed and contained non-solution gas, though there was some exsolved gas from surrounding bitumen production in both;
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> (b) there was no regionally extensive, impermeable barrier between the Upper and Lower Waseca; and
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> (c) it was possible for CNRL to produce non-solution gas, through perforations made in the Upper Waseca just below the gas-oil contact leading to "coning", and through narrow diameter cavities called wormholes created by CHOPS. [cold heavy oil production with sand method] (as summarized at para 24, ABCA decision)

While CNRL tried many different avenues to undermine the way in which Justice Sidnell appreciated the expert evidence and reached these conclusions, the Court of Appeal was not persuaded that there was any case for appellate intervention (ABCA decision at paras 40 – 80).

That was CNRL's principal defence at trial and as a ground of appeal. Since it failed, the focus shifted to consider the questions of whether CNRL's production of non-solution (or gas cap) gas was unlawful, and if so to what extent, and, to the extent unlawful, did Justice Sidnell err in settling on the basis for assessing damages.

What Are the Rules Pertaining to the Production of Non-Solution Gas by an Oil Sands Lessee?

The starting point is the Privy Council's decision in *Borys*. While that case decided that petroleum and natural gas were two separate substances and that the owner of the petroleum rights did not own the non-solution (or gas cap) gas, the case also endorsed the freedom of the lessee of the petroleum rights "to use gas which is in situ under the [lands] or which percolates under [the lands] as a result of the normal method of recovering the petroleum by using the gas to assist in drawing it to the surface." (JCPC decision at 76)
As Lord Porter for the Privy Council observed, "the question is not whose property the gas is, but what means the respondents may use to recover their petroleum." (JCPC decision at 77) The Court of Appeal had concluded as follows:

> [T]he reservation of the petroleum in the grant of the land enables [the petroleum rights holders] to use all reasonable means to extract the petroleum from the earth; [...] In my opinion, the [petroleum rights holders] are entitled to extract all the petroleum from the earth, even if there is interference with and a wastage of [Borys'] gas, so long as in the operations modern methods are adopted and reasonably used and the provisions of the relevant statute and regulations are observed. (*Borys*, ABCA decision at 237)

The Privy Council evidently agreed with that conclusion, noting that the reservation of petroleum must include an implied right to work, even though there was no express reservation of such a right.

In *Alberta Energy Co v Goodwell Petroleum Corp*, 2003 ABCA 277 (*Goodwell*) the Court of Appeal confirmed that *Borys* also applied to a competition between Crown oil sands lessees and gas lessees when it ruled that the Energy and Utilities Board erred in law when it concluded that an oil sands lessee did not have the right to produce initial gas-cap gas when producing its bitumen. In that case, Justice Fruman, in a unanimous reserved judgment, distilled five principles from the case law dealing with the implied right to work of the owner of mineral rights:

> 1. A right to mines and minerals includes the right to work, dig and use all reasonable means to recover the minerals.
>
> 2. If mining and recovering the minerals results in a known and inevitable consequence, that consequence is construed to be an implied term, and holders of lands or other mineral rights affected by that consequence cannot enjoin mining and recovery of the minerals.
>
> 3. These principles apply to reservations of mineral title, as well as grants and leases, including crown leases. Otherwise, the mineral right would be useless, and, as a general rule, deeds should not be construed to be without effect if other equally defensible interpretations are available.
>
> 4. While a bare right to a mineral conveys a right to win, work and carry away the mineral, that power can be expanded or restricted by express wording in the deed.
> …
>
> 5. Relevant statutes, including conservation rules arising from statutes, may modify these principles. (*Goodwell* at para 64, references omitted)

In that case, and with specific reference to principle # 5, Justice Fruman concluded that there was nothing in either the *Mines and Minerals Act*, RSA 2000, c M-17 or the oil and gas or oil sands conservation statutes, that limited the right of an oil sands lessee to produce initial gas cap gas (i.e., gas other than gas in solution) (*Goodwell* at paras 86 – 95). At the same time, Justice Fruman seems to have endorsed the possibility (acknowledged by the oil sands lessee in that case) that a gas lessee would have a claim for compensation, while conceding that the question of how to determine the appropriate compensation would be challenging (*Goodwell* at paras 8, 11, 78, 83 – 85, and 104 and associated footnotes).

For both Justice Sidnell and the Court of Appeal in this case, the regulatory context within which CNRL was producing non-solution gas proved to be crucial. The most significant element of that regulatory context was EUB Interim Directive 99-1 (ID 99-1), Gas/Bitumen Production in Oil Sands Areas – Application, Notification, and Drilling Requirements February 3, 1999 (the AER is the successor to the EUB (Energy and Utilities Board) for non-utility regulatory issues). As the introduction to the Directive indicates, the EUB adopted the Directive following the EUB's March 1998 Inquiry Report on Gas/Bitumen Production in Oil Sands Areas, the July 1998 Gas/Bitumen Committee's recommendations on Gas/Bitumen Issues, and the November 1998 Industry/EUB Committee's recommendations on Gas Production Application Areas. CNRL's failure to comply with the Directive was the critical factor that allowed both levels of court to distinguish CNRL's actions from the permitted 'incidental production' endorsed in *Borys* and *Goodwell.*

Justice Sidnell emphasised that while ID 99-1 did not prohibit an oil sands lessee/licensee from producing solution gas it did require the operator of such a property to conduct an assessment "to determine whether bitumen wells are producing gas other than solution gas" (KB decision at para 765), in which case the operator would require the EUB's approval in order to produce non-solution gas. Justice Sidnell quoted extensively from ID 99-1:

> With respect to bitumen wells, an assessment must be made by the operator on a site specific basis to determine whether the wells are producing gas other than solution gas, in which case an application for approval to produce gas is required. The assessment should consider such factors as the magnitude of the producing gas-bitumen ratio compared to the solution gas-bitumen ratio, the presence of any associated gas zones as indicated by well logs, drill stem tests or other data, and the proximity of the well perforations to any associated gas zones. Applications for in situ oil sands schemes (including commercial, primary recovery, and experimental schemes) should address the potential for gas other than solution gas to be produced. Furthermore, operators should be aware that approvals for in situ oil sands schemes may include a requirement to monitor gas production and apply for approval to produce gas when there is evidence that gas other than solution gas is being produced. (KB decision at para 765).

Justice Sidnell concluded as follows:

> ID-99 required CNRL to show that the gas was not associated or, if it was associated gas, why it should be produced. Clearly, CNRL was aware that there was some associated gas in the Waseca Formation. However, there was no evidence that CNRL undertook an ID-99 assessment to determine if there was a possibility that it would produce non-solution gas in its bitumen wells. I find that CNRL did not comply with ID-99. (KB decision at para 776)

What then were the implications of failing to comply with ID-99, particularly in light of the Court's decision in *Goodwell* to the effect that an oil sands lessee could produce non-solution gas? Here, Justice Sidnell noted that *Goodwell* court had itself cautioned that the rights of the oil sands lessee were not unlimited and that the *Goodwell* decision:

> … should not be read to extend the *Borys* principles to permit unrestricted use of initial gas-cap gas. The Privy Council confirmed the lower court's decision that incidental production of initial gas-cap gas was allowed, provided modern operating methods were followed in the production of the petroleum, and the provisions of relevant statutes and regulations were observed …. (*Goodwell* at para 36, note 15, and Justice Sidnell, KB decision, at paras 781 - 782).

This, combined with principle #5 from *Goodwell,* and Justice Sidnell's finding of non-compliance with ID-99, led her to conclude that CNRL's production of Signalta's non-solution gas was unlawful:

> Here, ID-99 was an important part of the regulatory framework and relevant to the production of non-solution gas incidental to bitumen production in a split title scenario. Having failed to comply with ID-99, CNRL was acting outside of the regulatory framework when it produced non-solution gas incidental to its bitumen production. Further, CNRL did not take adequate steps to determine whether it had the right to use or sell all of the gas it produced. Having found that CNRL produced non-solution gas, it was not at liberty to use or sell it without accounting to SRL for it. As a result, I find that CNRL did not, in the words of the Privy Council in *Borys*, observe the provisions of the relevant statutes and regulations and, as a result, the incidental unrestricted production of the initial gas-cap gas was not permitted in CNRL's bitumen wells in the Waseca Formation at Frog Lake. (KB decision at para 783)

The Court of Appeal sustained this assessment, concluding that Justice Sidnell did not err in distinguishing (and limiting) the application of *Goodwell* in the circumstances of this case. (ABCA decision at paras 89 – 91 & 93). In doing so, the Court has also reinforced the gas owner's right to compensation, even where the activities of the oil sands lessee are not unlawful. This follows from the way in which the Court explained *Goodwell*:

> *Goodwell* recognized that a non-solution gas lessee may be entitled to compensation for production of non-solution gas incidental to bitumen extraction. In this context, CNRL's denial of liability to Signalta based on *Goodwell* cannot be sustained. (ABCA decision at para 91)

Assessment of Damages

Justice Sidnell's decision at trial contains a detailed discussion of the different bases for assessing damages for unlawful production of a natural resource. I have also previously discussed this issue both in a law review article and in a number of different ABlawg posts. For the article see "Termination of an Oil and Gas Lease, Covenants as to Title, and Assessment of Damages for Wrongful Severance of Natural Resources: A Comment on Williston Wildcatters" (2005) 68)1) Saskatchewan Law Review 23. For ABlawg posts on *Canpar Holdings Ltd v Petrobank Energy and Resources Ltd and Gentry Resources Ltd*, unreported transcript of reasons for judgement October 9, 2009 and December 11, 2009 see here and on *Stewart Estate v TAQA North Ltd*, 2015 ABCA 357 see here and here.

But there is little to be gained right now in reviewing Justice Sidnell's reasons in this part of her judgment since the Court of Appeal's judgment on this point begins with a more abstract approach before returning to the details of the trial decision.

From the Court of Appeal's perspective there were two general question that needed an answer. The first issue was the threshold question of whether damages in a case like this should be assessed on a compensatory or restitutionary basis? And second, if damages should be assessed on a restitutionary basis, how should that be effected? Should it be effected on the basis of what has become known as a harsh approach or a mild approach or somewhere in between?

Compensatory or Restitutionary Damages

The phrase "compensatory" damages refers to the "ordinary" way of assessing damages for tortious behaviour which aims to put "an injured party in the position they would have been in, but-for the tort" (ABCA decision at para 106). Restitutionary damages by contrast focus on having the tortfeasor disgorge the benefit that it might have obtained by its tortious behaviour (ABCA decision at para 107). CNRL argued that Alberta resource cases dealing with restitutionary damages were all oil and gas lease cases (i.e., they dealt with the relationship between the lessor as plaintiff and the lessee as the defendant tortfeasor producing on a dead lease) and that this line of cases should not be extended to split title cases (i.e., cases in which the owner of some titled substances produces substances owned by another title holder) (ABCA decision at para 109). CNRL took the view that any extension of the lease case law "would have a broad detrimental effect" on production in Alberta given the prevalence of split title lands (ABCA decision, ibid). The Court of Appeal wasted no time in rejecting this self-serving policy argument and in doing so clearly sends a cautionary note to bitumen and petroleum lessees who might think that *Borys* gave them a broad licence to produce gas cap gas:

> We do not agree that the restitutionary approach to damages for trespass and conversion in the oil and gas context is limited in application to lease disputes, and more specifically, we do not agree that the restitutionary approach should not be applied in relation to split title hydrocarbon rights. While this Court has recognized that in some circumstances, a bitumen lessee may interfere with the rights of the natural gas lessee to the extent necessary to extract its own resources, it has also stated the compensation should be paid for this interference: *Goodwell* at paras 82-85. The distinct property rights created in split title arrangements are property rights like any other. Fundamentally, the split title scheme and associated regulatory regime exists on the premise that gas and bitumen rights holders will respect one another's interests. Given this, we see no reason to limit the applicability of the restitutionary approach to damages and the harsh rule from application in a split title context. (ABCA decision at para 110)

Harsh, Mild or … Just and Equitable?

According to the Court of Appeal, mild damages are assessed by taking the market value of the resource "with deductions for all the necessary expenses to get that resource to market" (ABCA decision at para 112). The contrast with the harsh rule (discussed below) suggests that under the

mild rule the expenses referred to include not only the expenses incurred downstream of the point of severance (i.e., the wellhead), but also an allowance for the cost of drilling a well or wells to get the resource to the point of severance. The Court suggests that "mild damages have been awarded when there was no intent to trespass, the defendant made an innocent mistake, or where the plaintiff was aware of the trespass and allowed it to continue" and further, that in a case of restitutionary damages, the mild rule would be applied presumptively thus imposing the burden on the plaintiff "to establish that the harsh rule should be applied instead" (ABCA decision at para 112). The Court also recognized another version of the mild rule in which damages are quantified "based on the royalty the plaintiff might have been willing to accept from the defendant or another party." (ABCA decision at para 113; a version of the mild rule that I have previously characterized as an "extra-mild" version of the rule (see, for example, here).

The principal difference between the harsh and mild rule as formulated by the Court of Appeal is that damages calculated by reference to the harsh rule make no allowance for severance costs - although the Court also notes that judicial practice varies: "the exact deductions vary and sometimes no deductions are allowed at all." (i.e., damages are quantified on the basis of value at the point of sale) (ABCA decision at para 114) As for the circumstances in which the harsh rule might be preferred over the mild rule, this would be "when the plaintiff can establish the trespass was wilful or there was some other kind of misconduct on the part of the defendant that warrants treating the trespass as if it was wilful" (ABCA decision at para 115), thus recognizing "that there is a punitive element to the harsh rule as its purpose is, in part, to deter wilful trespass …". (ABCA decision at para 115)

The Court examined the varying judicial practice in applying the harsh "rule" in some detail (as had Justice Sidnell at trial) before concluding that there was no single harsh rule for the assessment of damages. Instead, there is a spectrum, and much will depend upon the assessment by the trial judge of all the relevant circumstances:

> Our review of case law leads us to conclude that harsh damages may be awarded anytime a defendant's culpability is found to go beyond an innocent or mistaken trespass, and a trial judge considers there is something in the conduct of the defendant that warrants the application of the harsh rule. Thus, harsh rule damages may be applied when the trespass occurs through carelessness at one end of the spectrum, and through deliberate or wilful conduct at the far end of the spectrum. When the misconduct at issue is carelessness, there is some suggestion that something more than negligence is required, in the sense of a breach of a standard of care. However, the assessment is largely factual and contextual, and we do not consider it helpful to attempt to articulate general principles based on degrees of negligence or nuanced statements respecting culpability or intent.
>
> Ultimately, whether a defendant's conduct justifies the application of the harsh rule should be assessed through a trier's task of determining a "just and equitable" damage award based on the circumstances and evidence in a particular case. This is largely a factual and discretionary exercise. The caselaw provides guidance but may not dictate an outcome in any given circumstance because of the different facts involved in each assessment. (ABCA decision at paras 129 – 130)

Justice Sidnell at trial had provided a detailed analysis of CNRL's drilling and completion operations within the area of interest, noting that CNRL perforated wells withing 0.5 metres of the gas/bitumen interface and allowed for concurrent production from different perforations without prior regulatory approvals. However, she declined to find that CNRL was deliberately focused on producing non-solution gas. Rather CNRL's focus throughout was on producing bitumen. But that could not be the complete story because:

> This oil/bitumen focus appears to have, at times, resulted in CNRL not considering the production of non-solution gas, or the rights of the P&NG rights holder. However, CNRL's oil/bitumen focus does not demonstrate wilful, intentional, or deliberate behaviour; rather it demonstrates no thought for, or consideration for, the rights of the P&NG holder, in other words, disregard of those rights.
>
> ….
>
> CNRL's actions reflect a complacent attitude. Regardless of whether the production of non-solution gas was incidental to bitumen production, or something more, the production of non-solution gas was not a significant concern to CNRL. CNRL was prepared to assume that it was producing solution gas without diligent assessment. However, failing to make a diligent assessment is also not enough to demonstrate wilful, intentional, or deliberate behaviour.
>
> Looking at all of the evidence, I find that SRL has not shown, on a balance of probabilities, that CNRL's behaviour was wilful, intentional, or deliberate, or that CNRL knowingly produced non-solution gas and continued to do so knowing that it was wrong. (KB decision at paras 876 and 878 – 879.)

However, it was also "clear that CNRL did not trespass accidentally or inadvertently" (KB decision at para 886) as evidenced by CNRL's failure to make an ID 99 assessment and application, its failure to collect relevant pressure data and its failure to examines cores when they became available (KB decision at paras 881 – 885). More specifically Justice Sidnell concluded that:

> … it is not possible that CNRL believed, in good faith, that it had the right to produce the gas without adequately examining as to whether it was non-solution gas. In the same vein, I find that CNRL did not inadvertently trespass and commit conversion under a *bona fide* belief of title to what was removed. Indeed, given all of the indicators, discussed above, carrying on required an element of recklessness and disregard for the rights of the non-solution gas rights holder. Further, when the wells were initially drilled, CNRL did not take any steps to confirm ownership of the gas. This is not a case where CNRL had a low degree of culpability. (KB decision at para 886).

Ultimately, Justice Sidnell characterized CNRL's standard of behaviour as "negligent trespass" and in her view this justified assessing damages somewhere between gross revenues received (harsh) and gross revenues received minus deductions for all post severance costs as well as an allowance for capital and operation expenses (mild). This middle ground could be represented in this case as gross revenues minus "royalties and costs for gathering, transportation and compression" (KB decision at para 892).

The Court of Appeal found Justice Sidnell's "labelling" approach ("negligent trespass") to be unhelpful (ABCA decision at paras 124 and 128). However, the Court still declined to interfere with her overall conclusion to the effect that CNRL's behaviour fit somewhere in the middle of a spectrum running from blameless to intentional interference. The Court reasoned as follows:

> We are satisfied that despite her use of different nomenclature, the substance of the trial judge's analysis found the harsh rule should be applied. She undertook a comprehensive review of existing caselaw applying the restitutionary approach in determining what level of damages to award. If the trial judge erred, it was in thinking that that label "harsh damages" referred only to damages being awarded at the highest level, based on a full disgorgement scenario …. This did not, though, materially impact her analysis on the quantum of damages to be awarded given the circumstances of the case before her. She remained focused on awarding a just and equitable amount of damages to Signalta. Therefore, we do not accept that the trial judge committed an error in principle by suggesting that a higher level of intent was necessary to apply the harsh rule of damages. Instead, the trial judge effectively found that as CNRL's conduct did not fall at the far end of the spectrum amounting to bad faith or other more egregious wilful misconduct, a damages award at the highest level of gross disgorgement was not warranted. (ABCA decision at para 132)

Conclusions

This is an important decision of the Court of Appeal on both of the principal substantive issues discussed in this post.

First, the decision confirms that while petroleum and bitumen lessees may produce gas-cap (or non-solution) gas where that it is a necessary and incidental element of producing bitumen or petroleum and that production also comports with all applicable regulatory requirements. But the decision also confirms that the owner of the gas rights will be entitled to compensation for that production (i.e., a liability entitlement rather than the right to enjoin production of the petroleum or bitumen) even where such production is lawful.

Second, and where the production is unlawful (i.e., in excess of any implied entitlement to work and whether that production is characterized as trespass or conversion), damages may be owed to the owner of the natural gas rights. Damages may be assessed in the "ordinary" way (i.e., an amount that puts the injured party in the position they would have been in, but-for the tort), but, in an appropriate case, damages may instead be based on restitutionary principles in recognition of the unjust enrichment accruing to the petroleum or bitumen lessee as a direct result of its tortious behaviour. While this was all relatively clear before this decision, it was unclear what this meant in practice. Did it mean that the petroleum or bitumen lessee had to disgorge all revenues received, or just gross revenues subject to any of a number of possible deductions?

The Court of Appeal's earlier decision in the *Stewart Estate* case had failed to provide clear guidance on this issue, principally because the three-person court was so badly divided (see my posts on *Stewart Estate* referenced above). But in this case, the Court provides real guidance, at least in the form of a methodological approach. The Court recognizes that there is no hard and fast

rule but recognizes instead that the petroleum or bitumen lessee's behaviour (mere disregard of the potential rights of the gas lessee all the way through to deliberate and knowing interference with those rights) will affect its ability to claim deductions from gross revenues received. It is up to the trial judge to assess that conduct and its implications for allowable deductions with a view to arriving at a just and equitable result. And an appellate court will generally owe deference to that assessment. Previous case law illuminates the options and offers examples but does not prescribe a binding outcome (ABCA decision at para 126). I think that this represents an important step forward in the jurisprudence. That said, it is far from a bright line rule, and it will be difficult to advise clients with any certainty as to outcome.

There is also one issue that might have merited more discussion, and that is the distinction between the lawful production of gas-cap gas (or non-solution gas) by the petroleum or bitumen lessee and the unlawful production of such gas, and the assessment of compensation payable in each such case. In principle there should be a fundamental difference: incidental production of the gas cap (as qualified by *Goodwell*) is lawful; production beyond that is tortious and unlawful. But both Justice Sidnell and the Court of Appeal seem to have elided any such distinction. Both seem to treat all of CNRL's non-solution gas production as subject to the payment of restitutionary damages somewhere on the mid-point of the scale between mild and harsh (see especially ABKB at para 972). This may be justifiable.

I can, for example, see a line of argument to the effect that in this case, by failing to comply with ID 99-1, CNRL made it impossible for Signalta to differentiate between gas that was lawfully produced and gas that was unlawfully produced and therefore all gas produced by CNRL should be treated as gas that CNRL was not entitled to produce. Or perhaps the point is simply that any gas produced in violation of the Directive is tortious, but such a conclusion would surely require additional reasoning to establish that the Directive created a private cause of action: *The Queen (Can.) v. Saskatchewan Wheat Pool*, 1983 CanLII 21 (SCC), [1983] 1 SCR 205.

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