

COURT OF APPEAL OF ALBERTA

COURT OF APPEAL FILE NUMBER: 1801-0385AC
TRIAL COURT FILE NUMBER: 1701-00469
REGISTRY OFFICE: Calgary
PLAINTIFF/APPLICANT: NORMTEK RADIATION SERVICES LTD.
STATUS ON APPEAL: Appellant
DEFENDANT/RESPONDENT: ALBERTA ENVIRONMENTAL APPEALS BOARD and SECURE ENERGY SERVICES INC. and DIRECTOR OF ALBERTA ENVIRONMENT AND PARKS
STATUS ON APPEAL: Respondents
DOCUMENT: **FACTUM**



Appeal from the Decision of
The Honourable Madam Justice Janice R. Ashcroft
Dated the 21st day of November, 2018
Filed the 21st day of November, 2018

FACTUM OF THE APPELLANT, NORMTEK RADIATION SERVICES LTD.

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PART 1 – STATEMENT OF FACTS

A. INTRODUCTION

1. The Appellant, Normtek Radiation Services Ltd., appeals the decision of Madam Justice Janice R. Ashcroft dated November 21, 2018 dismissing the Appellant's application for judicial review of a standing decision made by the Alberta Environmental Appeals Board.
2. The following abbreviations are used in this Factum:
 - a. Amending Approval - Amending Approval No. 48516-01-04 dated July 14, 2016 issued by the Director under EPEA to authorize Secure Energy to receive and dispose of NORM waste at the Pembina Area Landfill, a Class 1 Hazardous Waste Landfill owned and operated by Secure Energy near the town of Drayton Valley, Alberta
 - b. Board - Alberta Environmental Appeals Board
 - c. Chambers Justice - the Honourable Madam Justice Janice R. Ashcroft
 - d. Director - Director, Red Deer North Saskatchewan Region, Alberta Environment and Parks
 - e. EPEA - *Environmental Protection and Enhancement Act*, RSA 2000, c E-12
 - f. Minister - the Minister assigned responsibility for EPEA under the *Government Organization Act*, RSA 2000, c G-10
 - g. NORM - Naturally occurring radioactive materials including Uranium 238, Radium 226, Radium 228, Thorium 232, Thorium 230, Thorium 228, Radon 222, Lead 210, and Polonium 210

- h. *Normtek* - Decision of the Chambers Justice in *Normtek Radiation Services Ltd. v Alberta (Environmental Appeals Board)*, 2018 ABQB 911, issued and filed on November 21, 2018
- i. Secure Energy - Secure Energy Services Inc.
- j. Standing Decision - Decision of the Board dated October 13, 2016 together with the reasons provided by the Board on March 2, 2018 in *Normtek Radiation Services Ltd. v Director, Red Deer North Saskatchewan Region, Alberta Environment and Parks*, re: Secure Energy Services Inc. (2 March 2018), Appeal No. 16-024-D (A.E.A.B.)

B. HISTORY OF EVENTS

- 3. The Appellant is an Alberta-based corporation which is a recognized expert in the management and disposal of NORM, including the environmental and human health impacts associated with the disposal of NORM. The Appellant is in the business of removing NORM from oilfield waste and disposing of NORM in an environmentally safe manner.¹
- 4. NORM are an environmental health and safety risk, and are considered hazardous to human health when exposure exceeds certain thresholds.
- 5. On August 24, 2014 the Appellant filed a statement of concern with the Director under EPEA concerning the application by Secure Energy for the Amending Approval.²

¹ *Normtek* at paras 2, 84, **Appeal Record at pages F52, F67.**

² Appellant's Statement of Concern filed with the Director (August 24, 2014), **Appellant's Evidence at pages A1–A11.**

6. On November 25, 2014 the Director rejected the Appellant's statement of concern on the basis that the Appellant was not directly affected by the application for the Amending Approval.³
7. On July 14, 2016 the Director issued the Amending Approval under EPEA to allow for the surface disposal of waste contaminated with NORM at the Pembina Area Landfill.⁴
8. On July 28, 2016 the Appellant submitted a notice of appeal to the Board concerning the Amending Approval, setting out concerns regarding the environmental and human health and safety impacts associated with the surface disposal of NORM.⁵
9. On August 11, 2016 the Board confirmed written submissions would be accepted from the Appellant and Secure Energy on whether the Appellant was directly affected by the Amending Approval.⁶
10. On August 26, 2016 the Appellant filed written submissions with the Board setting out how the Appellant is directly affected by the Amending Approval, its expertise on the management and disposal of NORM, and concerns regarding the environmental and human health impacts associated with the surface disposal of NORM.⁷
11. Secure Energy and the Director replied by asserting the Appellant is not directly affected by the Amending Approval.⁸

³ Letter from the Director to the Appellant (November 25, 2014), **Appellant's Evidence at page A12.**

⁴ Amending Approval No. 48516-01-04 (July 14, 2016), **Appellant's Evidence at pages A13-A19.**

⁵ Appellant's Notice of Appeal (July 28, 2016), **Appellant's Evidence at pages A20-A31.**

⁶ Letter from the Board to the Parties (August 11, 2016), **Appellant's Evidence at pages A32-A33.**

⁷ Letter from the Appellant to the Board (August 26, 2016), **Appellant's Evidence at pages A34-A52.**

⁸ Letter from Secure Energy to the Board (September 9, 2016), **Appellant's Evidence at pages A53-A65**; Response Submission from the Director to the Board (September 9, 2016), **Appellant's Evidence at pages A66-A76.**

12. On October 13, 2016 the Board dismissed the Appellant's notice of appeal on the basis that the Appellant is not directly affected by the Amending Approval. The Board provided no additional reasons in this letter decision.⁹
13. On March 2, 2018, approximately 16 months after dismissing the Appellant's notice of appeal, the Board provided reasons in its Standing Decision to support its finding that the Appellant is not directly affected by the Amending Approval.¹⁰
14. During the 4 year period commencing from when the Appellant initially filed its statement of concern with the Director in August 2014 until when the Board issued its Standing Decision in March 2018, the only basis provided by statutory authorities under EPEA for denying the Appellant any legal entitlement to participate in the decision-making process concerning the Amending Approval or challenge the validity of the Amending Approval itself, was that the residence of the Appellant is not located in sufficient proximity to the Pembina Area Landfill.
15. Having been denied an entitlement under EPEA to challenge the validity of the Amending Approval by reason only of the location of its residence, the Appellant filed two Originating Applications for judicial review on January 11, 2017. One Application sought judicial review of the Standing Decision, and was heard by the Chambers Justice on May 1, 2018 and denied in *Normtek*. The decision of the Chambers Justice in *Normtek* is the subject of this appeal. The other Originating Application seeks judicial review of the Director's decision to issue the Amending Approval, and this other Application remains adjourned *sine die* pending the outcome of this appeal.

⁹ Letter from the Board to the Appellant (October 13, 2016), **Appellant's Evidence at page A77**.

¹⁰ Standing Decision, **Appeal Record at pages F1-F51**.

C. THE DECISIONS

16. In its Standing Decision the Board dismissed the Appellant's notice of appeal concerning the Amending Approval on the basis that the Appellant is not directly affected by the Amending Approval and thus has no standing to proceed with the appeal.
17. The Board provided its standard interpretation of the phrase 'directly affected' and gave the following explanation for why the Appellant is not directly affected by the Amending Approval:
 - a. The Appellant failed to establish how the Amending Approval will harm a natural resource used by the Appellant, or the Appellant's actual use of a natural resource;¹¹
 - b. Any economic impact that may occur to the Appellant's NORM decontamination business as a result of adding a landfill disposal alternative for NORM waste is conjecture, speculation, and insufficiently connected to an environmental concern.¹²
18. The Board ruled it can only hear an appeal on the merits of the Amending Approval submitted by a person who is 'directly affected' by the Amending Approval.¹³
19. On the basis that the Appellant failed to convince the Board that it is directly affected by the Amending Approval, the Board dismissed the appeal under section 95(5)(a)(iii) of EPEA on the ground that the appeal was not properly before the Board.¹⁴

¹¹ Standing Decision at paras 12, 151, **Appeal Record at pages F8, F45.**

¹² Standing Decision at paras 137 - 148, **Appeal Record at pages F40 - F44.**

¹³ Standing Decision at paras 5, 116, 129, 171, **Appeal Record at pages F6, F31, F38, F51.**

¹⁴ Standing Decision at para 5, **Appeal Record at page F6.**

20. In *Normtek*, the Chambers Justice dismissed the Appellant's application for judicial review of the Standing Decision, ruling that:
- a. The Board's interpretation of the phrase 'directly affected' in Part 4 of EPEA, and its application in this case, is reasonable;
 - b. It was reasonable for the Board to conclude that it can only hear an appeal on the merits of the Amending Approval submitted by a person who is 'directly affected' by the Amending Approval;
 - c. The fact that 16 months elapsed between when the Board dismissed the appeal in October 2016 and when the Board provided its reasons in the Standing Decision in March 2018, does not warrant a declaration that such a delay in the provision of reasons by a statutory appellate body brings the administration of justice into disrepute.

PART 2 – GROUNDS OF APPEAL

21. The Appellant appeals the decision of the Chambers Justice in *Normtek* on the following grounds:
- a. The Chambers Justice erred in law by selecting the standard of reasonableness to review the decision by the Board that it can only hear an appeal on the merits of the Amending Approval submitted by a person who is 'directly affected' by the Amending Approval;
 - b. The Chambers Justice erred in law by ruling that the Board did not fetter its discretion under section 95(5)(a) of EPEA when the Board stated it can only hear an appeal on the merits of the Amending Approval submitted by a person who is 'directly affected' by the Amending Approval;
 - c. The Chambers Justice erred in law by ruling that it was reasonable for the Board to interpret section 95(5)(a) of EPEA as precluding the

Board from hearing a public interest appeal on the merits of the Amending Approval;

- d. The Chambers Justice erred in law by concluding it was reasonable for the Board to rule that an adverse impact cannot qualify a person as 'directly affected' under Part 4 of EPEA unless that adverse impact is in relation to that person's actual use of a natural resource.

PART 3 – STANDARD OF REVIEW

22. The standard of review applicable to questions of law arising from the decision of the Chambers Justice in *Normtek* is correctness.¹⁵

PART 4 – ARGUMENT

23. EPEA is Alberta's primary environmental statute.¹⁶
24. The Minister of Environment captured the essence of the purposes underlying EPEA during its first reading in the Legislature as Bill 23 in May 1992, including in particular, the establishment of an enhanced and transparent process for public participation in environmental and resource project decision-making.¹⁷
25. Section 2 of EPEA codifies the purposes of the legislation, two of which explicitly reference public participation in environmental decision-making.¹⁸
26. Other entitlements under EPEA to public participation in environmental decision-making include the following:
 - a. input to an advisory committee established by the Minister;

¹⁵ *Housen v Nikolaisen*, 2002 SCC 33 at para 8, [2002] 2 SCR 235.

¹⁶ EPEA, **Appellant's Authorities Tab 1**.

¹⁷ Alberta, Legislative Assembly, Hansard 22nd Leg, 4th Sess (11 May 1992 and 4 June 1992) at 805, 1184 (Ralph Klein), **Appellant's Authorities Tab 2**.

¹⁸ EPEA, s 2, **Appellant's Authorities Tab 1**.

- b. consultation on the development of ambient environmental quality objectives;
 - c. comments on draft terms of reference for an environmental impact assessment;
 - d. consultation on proposed regulations pertaining to the release of substances.¹⁹
27. In the case of a project which requires the Director to issue an approval or amend an existing approval, public participation begins with the requirement that either the project proponent or the Director give public notice of the application.²⁰
28. EPEA provides that any person who is directly affected by the application for approval for a proposed activity may respond to the public notice by submitting to the Director a statement of concern regarding the application.²¹
29. The Board is established as a statutory appellate body under Part 4 of EPEA. Section 90(2) provides that the Board shall hear appeals as provided for by EPEA or any other enactment, including appeals from decisions made by the Director to issue an approval or amend an existing approval.²²
30. EPEA sets out the appellate powers of the Board. With the limited exception of matters pertaining to enforcement action, administrative penalties or confidentiality, the Board hears an appeal on a decision made by the Director in order to make recommendations in a report to the Minister.²³
31. EPEA provides that in the case of an appeal regarding a decision by the Director to issue an approval or amend an existing approval, the power to

¹⁹ EPEA, ss 4, 14, 48, 122, **Appellant's Authorities Tab 1.**

²⁰ EPEA, ss 44(5), 72, **Appellant's Authorities Tab 1.**

²¹ EPEA, ss 44(6), 73(1), **Appellant's Authorities Tab 1.**

²² EPEA, s 90, **Appellant's Authorities Tab 1.**

²³ EPEA, ss 98, 99, **Appellant's Authorities Tab 1.**

confirm, reverse, or vary the Director's decision rests with the Minister taking into consideration the Board's report and the public interest.²⁴

32. Section 91 of EPEA sets out who may submit a notice of appeal to the Board. In the case of an appeal regarding a decision by the Director to issue an approval or amend an existing approval under EPEA, section 91(1)(a)(i) provides that a person who has previously submitted a statement of concern with the Director may submit a notice of appeal concerning the Director's decision to the Board.²⁵
 33. Section 95(5) of EPEA differentiates between circumstances in which the Board has the discretion to dismiss a notice of appeal on procedural grounds and circumstances in which the Board must dismiss a notice of appeal on procedural grounds.²⁶
 34. The phrase 'directly affected' is not defined in EPEA.
 35. The interpretation of sections 91(1)(a) and 95(5)(a) is at the heart of this appeal, and these provisions are set out more fully in argument below.
- A. The Chambers Justice erred in law by selecting the standard of reasonableness to review the decision by the Board that it can only hear an appeal on the merits of the Amending Approval submitted by a person who is 'directly affected' by the Amending Approval**
36. The Chambers Justice selected the standard of reasonableness to review the decision by the Board that it can only hear an appeal on the merits of the Amending Approval submitted by a person who is 'directly affected' by the Amending Approval.²⁷

²⁴ EPEA, ss 64, 100, **Appellant's Authorities Tab 1.**

²⁵ EPEA, s 91, **Appellant's Authorities Tab 1.**

²⁶ EPEA, s 95, **Appellant's Authorities Tab 1.**

²⁷ *Normtek* at paras 38 – 41, **Appeal Record at pages F59, F60.**

37. The Appellant submits that this is a question of standing before an administrative tribunal which is confined by the terms of its governing legislation as to persons it may hear from, and as such this is a jurisdictional question.²⁸
38. Further or in the alternative, given the supervisory role of the Board over a statutory decision-maker, the Appellant submits that this standing determination by the Board performs a significant gatekeeping function in relation to appellate or Ministerial review over the exercise of statutory power by the Director. Thus it follows that this question of whether the Board can only hear an appeal on the merits of the Amending Approval submitted by a person who is 'directly affected' by the Amending Approval, must be resolved in a manner which is consistent with general developments in the law regarding standing, and in particular the need for discretion to grant standing to ensure that the legality of a statutory decision is subjected to scrutiny. Accordingly, the Appellant submits this is a question of central importance to the legal system as a whole and outside the specialized expertise of the Board because the resolution of this standing question has significance for other statutory appellate bodies in Canada.
39. The standard of review is correctness for a jurisdictional question decided by the Board and for a question of central importance to the legal system as a whole which is outside the specialized expertise of the Board.²⁹
40. It is well-settled law that a privative clause, such as that set out in section 102 of EPEA, does not completely preclude judicial review, particularly in relation to a question of jurisdiction.
41. Should this Honourable Court determine that the Chambers Justice did not err by selecting the standard of reasonableness to review the decision by the

²⁸ *Quebec (Attorney General) v Guérin*, 2017 SCC 42 at para 66, [2017] 2 SCR 3 (Rowe and Brown, JJ in dissent), **Appellant's Authorities Tab 3**.

²⁹ *Edmonton (City) v Edmonton East (Capilano) Shopping Centres Ltd.*, 2016 SCC 47 at paras 22 – 24, [2016] 2 SCR 293.

Board that it can only hear an appeal on the merits of the Amending Approval submitted by a person who is ‘directly affected’ by the Amending Approval, the Appellant submits that the reasonableness of an interpretation by a statutory tribunal on its authority to grant standing is to be assessed on the extent to which that interpretation is consistent with the objectives of the tribunal’s governing legislation and does not hinder the ability of that tribunal to fulfill its statutory mandate.³⁰

42. The Appellant further submits that a decision which is the product of fettered discretion cannot fall within the range of reasonable outcomes.³¹

B. The Chambers Justice erred in law by ruling that the Board did not fetter its discretion under section 95(5)(a) of EPEA when the Board stated it can only hear an appeal on the merits of the Amending Approval submitted by a person who is ‘directly affected’ by the Amending Approval

43. The Chambers Justice dismissed the Appellant’s argument that the Board fettered its discretion under section 95(5)(a) of EPEA, and chose to re-frame this issue as a question of statutory interpretation.³²

44. The Chambers Justice ruled “it was open to the Board to prioritize the specific requirement of having to be ‘directly affected’, over the more general wording set out in section 95(5)” and “only those found to be ‘directly affected’ may appeal the Director’s decision” and “[t]he Board’s dismissal of the appeal under section 95 on the basis that Normtek was not ‘directly affected’ is reasonable”.³³

³⁰ *Delta Air Lines Inc. v Lukács*, 2018 SCC 2 at paras 12-20, [2018] 1 SCR 6 [*Lukács*], **Appellant’s Authorities Tab 4**.

³¹ *Stemijon Investments Ltd. v Canada (Attorney General)*, 2011 FCA 299 at paras 20-25, 341 DLR (4th) 710 [*Stemijon Investments*], **Appellant’s Authorities Tab 5**.

³² *Normtek* at para 100, **Appeal Record at page F70**.

³³ *Normtek* at paras 101, 103, 111, **Appeal Record at pages F70, F72**.

45. The Appellant respectfully submits the Chambers Justice erred in law by finding the Board did not fetter the discretion provided to it in section 95(5)(a) of EPEA by determining it can only hear an appeal on the merits of the Amending Approval from a person who is ‘directly affected’ by the Amending Approval.
46. The rule against fettering of discretion requires a statutory tribunal with discretionary authority to actually exercise that discretion in determining each case on its merits. While it may be helpful or even necessary for a statutory tribunal to formulate guidelines, policies or factors that indicate how the tribunal will exercise discretion provided to it by legislation, the tribunal cannot treat such guidelines, policies or factors as binding upon it to the exclusion of other relevant considerations. To put it another way, guidelines, policies or factors will inform the exercise of discretion by a statutory tribunal, but the tribunal cannot rely upon them exclusively or blindly to the point where it fails or refuses to consider the specific circumstances of a case in the exercise of its discretionary authority.³⁴
47. This Honourable Court has concisely summarized the error of unlawful fettering of discretion by a statutory tribunal as follows:

Procedural fairness demands that administrative decision-makers do not fetter their discretion by adopting inflexible policies or rules, as the very existence of discretion implies that it can and should be exercised differently in different cases. A decision maker who always exercises its discretion in a particular way improperly limits the ambit of its power.³⁵

48. The reasons provided by a statutory tribunal in the exercise of discretionary authority must demonstrate that the tribunal actually exercised its discretion. Word-for-word replication of factors or guidance from past decisions or the

³⁴ *Maple Lodge Farms Ltd. v Canada*, [1982] 2 SCR 2 at 7, **Appellant’s Authorities Tab 6**; *Kanthisamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at paras 45, 60, [2015] 3 SCR 909, **Appellant’s Authorities Tab 7**; *Chandler v British Columbia (Superintendent of Motor Vehicles)*, 2018 BCCA 300 at para 29, [2018] BCJ No 1439, **Appellant’s Authorities Tab 8**.

³⁵ *Lac La Biche (County) v Lac La Biche (County) (Subdivision and Development Appeal Board)*, 2014 ABCA 305 at para 11, 580 AR 368, **Appellant’s Authorities Tab 9**.

use of ‘stock language’ by a tribunal in a discretionary decision can be indicia of unlawful fettering where such reasons fail to demonstrate that the tribunal considered the full scope of its discretionary power under the legislation.³⁶

49. In its *Lukács* decision, the Supreme Court of Canada ruled a statutory tribunal with discretionary authority to decide which persons have standing to appear before it, fetters its discretion when the tribunal applies an inflexible standing test which precludes any possibility of certain complainants from appearing before the tribunal.³⁷
50. Section 95(5)(a) of EPEA clearly states that the Board may dismiss a notice of appeal if it forms the opinion the person who filed the notice is not directly affected by the Amending Approval, but section 95(5)(a) does not state the Board must dismiss a notice of appeal when it forms such opinion.³⁸
51. In its Standing Decision the Board clearly states that it can only hear an appeal on the merits of the Amending Approval submitted by a person who is directly affected by the Amending Approval.³⁹
52. The Appellant observes that there is no such rule constraining the Board’s discretion in Part 4 of EPEA, and the Appellant submits it was not open to the Board to fetter the discretion provided to it by section 95(5)(a) of EPEA by stating it can only hear an appeal on the merits of the Amending Approval from a person who is ‘directly affected’ by the Amending Approval.
53. A review of the Board’s decisions on standing demonstrates that the Board rigidly decides standing matters in the same way as it did in the Standing Decision, notwithstanding the discretion provided to it by section 95(5)(a) of EPEA. The interpretation of ‘directly affected’ provided in the Standing

³⁶ *Stemijon Investments* at paras 55-60, **Appellant’s Authorities Tab 5**.

³⁷ *Lukács* at paras 12 – 20, **Appellant’s Authorities Tab 4**.

³⁸ EPEA, s 95(5)(a), **Appellant’s Authorities Tab 1**.

³⁹ Standing Decision at paras 5, 116, 129, 171, **Appeal Record at pages F6, F31, F38, F51**.

Decision at paragraphs 116 to 128 is almost a word-for-word replication of the interpretation given by the Board in earlier decisions.⁴⁰

C. The Chambers Justice erred in law by ruling that it was reasonable for the Board to interpret section 95(5)(a) of EPEA as precluding the Board from hearing a public interest appeal on the merits of the Amending Approval

54. The Chambers Justice noted it was ‘curious’ that the Legislature used the word ‘may’ in section 95(5)(a) and that a reading of sections 91(1)(a)(i) and 95(5)(a) involves ‘some ambiguity’. Despite these observations from the text of EPEA itself, the Chambers Justice went on to declare a ‘clear legislative intent’ that EPEA does not allow for a public interest complaint to the Board. The Chambers Justice provides no apparent application of statutory interpretation principles to support this reading of legislative intent in EPEA, but rather the Chambers Justice cites two judicial decisions, neither of which involve an interpretation of EPEA.⁴¹

55. In response to the submission by the Appellant that the restrictive approach to standing applied by the Board is inconsistent with its supervisory function as an appellate body under EPEA, the Chambers Justice acknowledged the Board’s approach means the Director’s decision as to the merits of the Amending Approval may go unchallenged, but that it ‘must be assumed’ this was intended by the Legislature.⁴²

⁴⁰ Tomlinson and Jackson v Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development, re: County of St. Paul (14 September 2015), Appeal Nos. 14-021-022 and 15-011-012-ID2 (A.E.A.B.) at paras 74 to 80, **Appellant’s Authorities Tab 10**; Water Matters Society of Alberta et al. v Director, Southern Region, Operations Division, Alberta Environment and Water, re: Western Irrigation District and Bow River Irrigation District (10 April 2012), Appeal Nos. 10-053-055 and 11-009- 014-D (A.E.A.B.) at paras 103 to 109, **Appellant’s Authorities Tab 11**; Gadd v Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd. (8 October 2004), Appeal Nos. 03-150, 03-151 and 03-152-ID1 (A.E.A.B.) at paras 57 to 69, **Appellant’s Authorities Tab 12**.

⁴¹ *Normtek* at paras 101, 102, **Appeal Record at page F70**.

⁴² *Normtek* at paras 107, 108, **Appeal record at page F71**.

56. The Appellant respectfully submits the Chambers Justice erred in law by failing to apply any principle of statutory interpretation, whether literal, contextual, or purposive, to determine the intention of the Legislature in drafting sections 91(1)(a)(i) and 95(5)(a) of EPEA.
57. The Appellant further submits the Chambers Justice erred in law by accepting as reasonable, an interpretation of sections 91(1)(a)(i) and 95(5)(a) of EPEA that (1) precludes the Board from hearing a public interest appeal concerning the Amending Approval, (2) accepts that a decision made by the Director may go unchallenged under EPEA, and (3) creates the need for parallel proceedings (under EPEA and the superior courts) to review the legality of the Amending Approval.
58. The proper approach to statutory interpretation involves deciphering the intent of the legislator by reading the words of an enactment in their entire context and according to their grammatical and ordinary sense, harmoniously with the scheme and purpose of the legislation and the intention of the legislator.⁴³
59. Section 10 of the *Interpretation Act* provides that an enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.⁴⁴
60. The importance of reading the words of an enactment in a purposive or contextual manner is concisely summarized by Madam Justices Abella and Karakatsanis (writing in dissent) in a recent Supreme Court of Canada decision:

Statutory interpretation is the art of inferring what words mean. Sometimes the meaning is obvious, either because of the clarity of the language or of its relationship to the legislative context. But sometimes interpreting words literally in isolation, undermines the

⁴³ *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21.

⁴⁴ *Interpretation Act*, RSA 2000, c I-8, s 10, **Appellant's Authorities Tab 13**.

policy objectives of the statutory scheme. The debate between those who are “textualists” and those who are “intentionalists” was resolved in Canada in 1998 when this Court decided that “there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.” We do not just look at the words.⁴⁵

61. The Appellant submits the proper reading of sections 91(1)(a)(i) and 95(5)(a) is that the Legislature did not intend to preclude the Board from hearing a public interest appeal filed by a person who is not ‘directly affected’ by the Amending Approval. What follows is a literal, contextual, and purposive interpretation of these provisions to support this interpretation by the Appellant.
62. Section 91(1) provides for the submission of a notice of appeal to the Board. Clauses (a) thru (p) in subsection (1) set out the persons who may file a notice of appeal with the Board. The operative paragraph in this case with respect to an appeal of the Amending Approval is section 91(1)(a)(i) which reads as follows (emphasis added):

91(1) A notice of appeal may be submitted to the Board by the following persons in the following circumstances:

(a) where the Director issues an approval, makes an amendment, addition or deletion pursuant to an application under section 70(1)(a) or makes an amendment, addition or deletion pursuant to section 70(3)(a), a notice of appeal may be submitted

(i) by the approval holder or by any person who previously submitted a statement of concern in accordance with section 73 and is directly affected by the Director’s decision, in a case where notice of the application or proposed changes was provided under section 72(1) or (2), or ...

⁴⁵ *Telus Communications Inc. v Wellman*, 2019 SCC 19 at para 107, **Appellant’s Authorities Tab 14**.

63. The Appellant observes that the opening phrase in section 91(1)(a)(i) clearly speaks only in terms of a submission of a notice of appeal to the Board, and not the dismissal of an appeal.
64. The Appellant submits the proper reading of section 91(1)(a)(i) is that a person who previously filed a statement of concern with the Director under section 73 concerning the application for the Amending Approval, is then entitled under section 91(1)(a)(i) to file a notice of appeal with the Board concerning the Amending Approval. More generally, section 91(1)(a)(i) confirms that in cases where the Director or the project proponent gives public notice of an application under section 72, a prospective appellant must file a statement of concern with the Director in order to preserve their entitlement to appeal the Director's decision before the Board. As the Chambers Justice noted, section 91(1)(a) is a procedural requirement that prevents a prospective appellant from skipping the need to file a statement of concern with the Director under section 73 and 'jumping into Board proceedings at first instance'.⁴⁶
65. The Appellant submits that the reference to the phrase 'directly affected' in section 91(1)(a)(i) is only in relation to the Director's determination of the statement of concern filed under section 73, and not in relation to the Board's determination which is more properly assessed under section 95(5)(a).
66. It is clear from EPEA that section 95(5) is the provision which sets out the Board's authority to dismiss a notice of appeal filed with the Board on procedural grounds. The Appellant notes that clauses (a) and (b) in section 95(5) differentiate between cases in which the Board has the discretion to dismiss a notice of appeal and those in which it is mandatory for the Board to dismiss a notice of appeal (emphasis added):

95(5) The Board

⁴⁶ *Normtek* at footnote 9, **Appeal Record at page F71**.

(a) may dismiss a notice of appeal if

- (i) it considers the notice of appeal to be frivolous or vexatious or without merit,
- (ii) in the case of a notice of appeal submitted under section 91(1)(a)(i) or (ii), (g)(ii) or (m) of this Act or section 115(1)(a)(i) or (ii), (b)(i) or (ii), (c)(i) or (ii), (e) or (r) of the Water Act, the Board is of the opinion that the person submitting the notice of appeal is not directly affected by the decision or designation,
- (iii) for any other reason the Board considers that the notice of appeal is not properly before it,
- (iv) the person who submitted the notice of appeal fails to comply with a written notice under section 92, or
- (v) the person who submitted the notice of appeal fails to provide security in accordance with an order under section 97(3)(b),

and

(b) shall dismiss a notice of appeal if in the Board's opinion

- (i) the person submitting the notice of appeal received notice of or participated in or had the opportunity to participate in one or more hearings or reviews under Part 2 of the Agricultural Operation Practices Act, under the Natural Resources Conservation Board Act or any Act administered by the Alberta Energy Regulator or the Alberta Utilities Commission at which all of the matters included in the notice of appeal were adequately dealt with, or
- (ii) the Government has participated in a public review under the Canadian Environmental Assessment Act (Canada) in respect of all of the matters included in the notice of appeal.

67. The Appellant submits the operative paragraph in this case is section 95(5)(a)(ii), since the Board dismissed the Appellant's appeal upon forming the opinion that the Appellant is not directly affected by the Amending Approval. However, the Appellant notes that in its Standing Decision at

paragraph 5 the Board states it dismissed the appeal under clause (iii) of section 95(5)(a).

68. The Appellant submits that a literal and contextual reading of section 95(5) provides that it is not mandatory for the Board to dismiss a notice of appeal under clauses (a)(ii) or (a)(iii). In particular, had the Legislature intended that a notice of appeal must be dismissed in the circumstance where the Board is of the opinion the person filing the appeal is not 'directly affected' by the impugned decision of the Director, the Legislature could have easily included this reference under the mandatory provisions in clause (b) of section 95(5).
69. The Appellant submits it is also instructive to observe that paragraph (ii) of clause (a) was added to section 95(5) by the Legislature in 1996. The fact that this paragraph was added in an amendment subsequent to the enactment of EPEA, further reinforces that the Legislature explicitly chose not to include this reference under the mandatory provisions in clause (b) of section 95(5).⁴⁷
70. The Board itself has previously given section 95(5) a similar interpretation to that advanced here by the Appellant. In a 1998 decision, the Board made the following reference in relation to what is now section 95(5) (formerly section 87(5)):

The Legislature's contrasting use of the permissive word 'may' and the mandatory word 'shall' in subsections 87(5)(a) and (b), respectively, strongly suggests that the Board has discretion to forego dismissing an appeal under any of the circumstances listed in subsection 87(5)(a) where fairness dictates continuing with the appeal, but lacks such discretion in any circumstance listed in subsection 87(5)(b).⁴⁸

⁴⁷ *Environmental Protection and Enhancement Act Amendment Act, 1996*, SA 1996, c 17, s 23(c), **Appellant's Authorities Tab 15**.

⁴⁸ *Bildson v Acting Director of North Eastern Slopes Region, Alberta Environmental Protection, re Smoky River Coal*, (19 October 1998) Appeal No. 98-230-D (AEAB) at para 13 [*Bildson*], **Appellant's Authorities Tab 16**.

71. The Appellant submits the interpretation of section 95(5)(a) given by the Board in its Standing Decision that the Board can only hear an appeal on the merits of the Amending Approval from a person who is 'directly affected' by the Amending Approval is diametrically opposed with the interpretation given to the same provision in its earlier *Bildson* decision.
72. The Appellant further notes that section 95(6) of EPEA provides the Board with discretion to allow any person to make representations to the Board in a matter.⁴⁹
73. The Board itself has interpreted section 95(6) as giving it the authority to grant 'full party status' to a person with a 'valid interest' in an appeal who is not otherwise 'directly affected', noting that the exercise of such power is consistent with the purpose of EPEA, the public interest, and the supervisory appellate function of the Board as recommending body to the Minister.⁵⁰
74. In *Altus Group (Limited) v Calgary (City)* this Honourable Court surveyed the law on conflicting interpretations of a statutory provision given by an administrative tribunal, noted that it would be difficult to conceive of meaningful legislation that would allow for 'diametrically opposed' interpretations, and suggested opposite interpretations by a tribunal were untenable under the rule of law.⁵¹
75. The Appellant submits that it would be incoherent, and thus unreasonable, to allow for two opposite interpretations of EPEA's standing provisions to remain in the jurisprudence. It is simply not possible for section 95(5)(a) to bear the interpretation provided by the Board in its *Bildson* decision and the interpretation provided by the Board in its Standing Decision. Similarly, it is

⁴⁹ EPEA, s 95(6), **Appellant's Authorities Tab 1**.

⁵⁰ *Doull v Director, Northern Region, Regional Services, Alberta Environment re: Inland Cement Limited* (11 October 2002), Appeal Nos. 02-018-041, 047, 060, 061, 073, and 074-IDI (A.E.A.B.) at paras 43, 72, 79, 80, 83, **Appellant's Authorities Tab 17**.

⁵¹ *Altus Group (Limited) v Calgary (City)*, 2015 ABCA 86 at paras 19 – 31, 382 DLR (4th) 455 [*Altus Group*] **Appellant's Authorities Tab 18**.

incoherent for the Board to have the power to hear from a public interest appellant under section 95(6) but not have the power under section 95(5)(a).

76. The Appellant submits that a literal and contextual reading of EPEA section 95(5) demonstrates an intention by the Legislature that the Board may hear a public interest appeal, and therefore it is unreasonable or incorrect to interpret section 95(5)(a) of EPEA as precluding the Board from hearing a public interest appeal submitted by a person who is not directly affected by the Amending Approval.
77. A purposive reading of EPEA further supports the interpretation of sections 91(1)(a)(i) and 95(5)(a) advanced by the Appellant.
78. It is clear from the text in EPEA that the Legislature intended the Board to serve as a specialized appellate body to inform and assist the Minister in supervising the Director to ensure the Director acts in the public interest and is accountable in the administration of EPEA.⁵²
79. The Board itself has acknowledged its supervisory function under EPEA.⁵³
80. The Board thus performs a supervisory function over the Director which is analogous to the supervisory role of a superior court established under section 96 of the *Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3.
81. But for the establishment of the Board and its supervisory powers set out under Part 4 of EPEA, a person seeking to challenge the legal validity of the Amending Approval would have to seek judicial review in a superior court. Indeed, in the face of having its notice of appeal dismissed by the Board without reasons in October 2016, the Appellant filed an Originating Application seeking judicial review of the Amending Approval under the *Alberta Rules of Court*, Alta Reg 124/2010, and that judicial review

⁵² EPEA, ss 64, 99-100, **Appellant's Authorities Tab 1**.

⁵³ Mountain View Regional Water Services Commission, [2005] AEABD No 10 at para 43, **Appellant's Authorities Tab 19**.

application remains adjourned *sine die* in the Court of Queen's Bench pending the outcome of this appeal.

82. The Board's interpretation that sections 91(1)(a)(i) and 95(5)(a) in EPEA preclude it from hearing a public interest appeal concerning the Amending Approval, means that the Board's supervisory powers over the Director will only be triggered by a person who meets its narrow interpretation of being 'directly affected' by the Amending Approval as set out in the Standing Decision.
83. As is explained more fully below, the Board's interpretation leads to the absurd outcome that a public interest litigant with a 'genuine interest' in a justiciable issue will have standing before a superior court to appeal the Amending Approval, but will lack standing before the Board. The Appellant submits that in explicitly establishing a specialized appellate body under EPEA, the Legislature could not have intended that supervision over the Director would be more readily exercised by a superior court than the Board, and that there would be the need for parallel proceedings (at the Board and in the superior courts) to review the legality of the Amending Approval. However, that is the result of the Board's view that it is precluded from hearing a public interest appeal concerning the Amending Approval.
84. The Board's interpretation of sections 91(1)(a)(i) and 95(5)(a) in its Standing Decision, together with its restrictive interpretation of the phrase 'directly affected', significantly limits the class of persons with standing before the Board to appeal the Amending Approval. In the Standing Decision, the Board clearly states that in order to appeal the Amending Approval before the Board a person must establish how the Amending Approval will harm a natural resource used by the Appellant, or the Appellant's actual use of a natural resource.

85. The Appellant respectfully submits the Chambers Justice erred in law by assuming it was intended by the Legislature that the Board could apply such a restrictive test for standing which significantly limits the class of persons entitled to appeal a decision made by the Director under EPEA. A purposive interpretation of EPEA does not support the reading provided by the Chambers Justice. To the contrary, the provisions in EPEA in relation to supervision over the exercise of authority by the Director, suggest the Legislature intended the Board to facilitate the administration of Ministerial oversight over the Director, rather than to constrain it by imposing a restrictive test for standing.
86. The Appellant submits it is unlawful for a statutory tribunal to interpret its power to grant standing in a way that effectively defeats the scheme of its enabling legislation or that cannot be supported by a reasonable interpretation of how the tribunal's governing legislative scheme was intended to operate.⁵⁴
87. The Chambers Justice distinguished *Lukács* on the basis that the tribunal in that case applied a narrow test for standing in the face of broad discretion in its governing legislation. However in distinguishing *Lukács*, the Chambers Justice gave no consideration to the text in section 95(5)(a) of EPEA. Rather, the Chambers Justice distinguished *Lukács* by only referring to the language in section 91(1)(a)(i) with the reference that "the Board is charged with interpreting statutory wording which specifically states that only those found to be 'directly affected' may appeal the Director's decision." By doing so, the Appellant respectfully submits the Chambers Justice committed the same legal error as did the Board: presuming that it was open to the Board to prioritize the specific requirement of having to be 'directly affected' in section 91(1)(a)(i), over the more general wording set out in section 95(5)(a).⁵⁵

⁵⁴ *Lukács* at paras 12-20, **Appellant's Authorities Tab 4**.

⁵⁵ *Normtek* at para 111, **Appeal Record at page F72**.

88. The decision of the Chambers Justice that section 95(5)(a) precludes the Board from hearing a public interest appeal concerning the Amending Approval results in the need for parallel proceedings to supervise the exercise of authority by the Director.
89. One stream of proceedings to supervise the Director consists of an appeal heard by the Board under EPEA filed by a person who is ‘directly affected’ by the Director’s decision which, in turn, leads to a report by the Board to the Minister under section 99 and a decision by the Minister under section 100 to confirm, reverse or vary the Director’s decision. The Standing Decision precludes the Appellant from pursuing this avenue of appellate review over the Amending Approval.
90. The other stream of proceedings to supervise the Director consists of a judicial review conducted by a superior court filed by a person with a ‘genuine interest’ in the Director’s decision, and who meets the test for public interest standing established under principles of administrative law. The test for public interest standing and its role under administrative law is explained further below, but the key principle is that an exercise of statutory power must be subject to legal scrutiny by the superior courts.⁵⁶ As noted earlier in this Factum, the Appellant is seeking judicial review of the Amending Approval as a public interest litigant, but that application remains adjourned *sine die* in the Court of Queen’s Bench pending the outcome of this appeal.
91. In light of the plain language set out in section 95(5), as well as the purposive and contextual interpretation of EPEA set out herein which establishes a supervisory function for the Board, and this Honourable Court’s ruling in *Altus Group* regarding conflicting statutory interpretations made by a tribunal, the Appellant respectfully submits the Chambers Justice erred in law by accepting as reasonable, the Board’s interpretation that section 95(5)(a)

⁵⁶ *Crevier v A.G. (Québec) et al.*, [1981] 2 SCR 220 at 236, 237, **Appellant’s Authorities Tab 20**.

precludes the Board from hearing a public interest appeal concerning the Amending Approval.

92. The Appellant submits it is an unreasonable interpretation of EPEA to conclude that the Legislature intended to create the need for parallel proceedings (at the Board and in the superior courts) to supervise the exercise of statutory authority by the Director.
93. The Appellant submits a reasonable or correct interpretation of 95(5)(a) is that the Legislature intended for the Board to have the power to hear an appeal from a person who has a 'genuine interest' in the matter.
94. In *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, the Supreme Court of Canada confirmed the importance of recognizing the role of persons with a 'genuine interest' having standing in review proceedings to apply legal scrutiny on the exercise of statutory authority.⁵⁷
95. The principle of legality refers to two ideas relevant in this case: (1) state action must conform to statutory authority; and (2) there must be practical and effective ways to challenge the legality of state action. The use of discretion to grant standing is needed to ensure that the legality of administrative action is subjected to scrutiny.
96. In order to balance the tension between the need to limit the potential for frivolous claims and the need to ensure the principle of legality is applied to the exercise of statutory authority, the Supreme Court of Canada has set out the following three factors to consider: (1) whether there is a serious justiciable issue raised by the claimant; (2) whether the claimant has a real stake or genuine interest in the matter; and (3) whether the claim represents

⁵⁷ *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 at paras 31-33, [2012] 2 SCR 524 [*Downtown Eastside Sex Workers*], **Appellant's Authorities Tab 21**.

a reasonable and effective way to bring legal scrutiny to the matter. These factors are to be assessed holistically and in a flexible manner, rather than as a mechanical checklist.⁵⁸

97. The Appellant submits that the Standing Decision reflects a finding by the Board that the Appellant is raising a serious justiciable issue and that the Appellant has a genuine interest in the matter, but the Appellant concedes that if it is successful in this Appeal it would be necessary for the Board to specifically address these points when the matter is remitted back to it.

98. However, the Appellant further submits it is possible for this Honourable Court to recognize that the ability of the Board to hear a public interest appeal on the merits of the Amending Approval does represent a reasonable and effective way to bring legal scrutiny to the matter. The Appellant makes this submission on the basis of the following three observations: (1) the Board brings specialized expertise and accumulated institutional knowledge to bear on an appeal which allows the decision of the Director to issue the Amending Approval to be considered in an appropriate context; (2) unlike the role of a superior court in judicial review the Board is not constrained by principles of deference in its review of the Director's decision; and (3) the Board's function as a conduit to the administration of Ministerial oversight means that legal errors committed by the Director can be remedied by the Minister rather than consuming scarce judicial resources.

99. An interpretation of section 95(5)(a) that provides the Board with discretion to hear a public interest appeal from a person who has a 'genuine interest' in the matter eliminates the need for parallel proceedings (at the Board and in the superior courts) to supervise the exercise of statutory authority by the Director.

⁵⁸ *Downtown Eastside Sex Workers* at paras 35-37, **Appellant's Authorities Tab 21**.

100. The Appellant submits that where a statutory appellate tribunal's governing legislation can be interpreted to enable public interest standing, as has been advocated here by the Appellant with respect to the Board under EPEA, it is unreasonable for the statutory tribunal to employ a more restrictive approach to standing than what is employed by the superior courts, as the dissent wrote in *Lukács*: "Put colloquially, if it's good enough for the courts, it's good enough for tribunals".⁵⁹

D. The Chambers Justice erred in law by concluding it was reasonable for the Board to rule that an adverse impact cannot qualify a person as 'directly affected' under Part 4 of EPEA unless that adverse impact is in relation to that person's actual use of a natural resource

101. The Chambers Justice ruled the Board's interpretation of 'directly affected' in section 91(1)(a)(i) requiring that the Appellant establish how the Amending Approval will harm a natural resource used by the Appellant, or the Appellant's actual use of a natural resource, is reasonable.⁶⁰

102. The Chambers Justice acknowledged that the Board may have improperly characterized the impact of the Amending Approval on the Appellant as speculative, but nonetheless ruled it was reasonable for the Board to find on the evidence that such impact was insufficiently 'direct' and not connected to an environmental concern.⁶¹

103. The essence of the Board's interpretation of 'directly affected', which the Chambers Justice held to be reasonable, is reflected in its conclusion that in order to be granted standing to appeal the merits of the Amending Approval, the Appellant had to satisfy the Board that the Appellant would be impacted by radiation coming from the Pembina Area Landfill or that the Appellant's

⁵⁹ *Lukács* at para 60 (Abella, Moldaver, and Karakatsanis JJ dissenting), **Appellant's Authorities Tab 4**.

⁶⁰ *Normtek* at paras 57 - 67, **Appeal Record at pages F64, F65**.

⁶¹ *Normtek* at paras 79 - 96, **Appeal Record at pages F67-F69**.

use of a natural resource would be impacted by the radiation coming from the landfill.⁶²

104. The phrase 'directly affected' is not defined in EPEA.
105. The Court of Queen's Bench has noted there is room for flexibility in the interpretation of the phrase 'directly affected' under EPEA.⁶³
106. The Board makes only a passing reference in its Standing Decision to the need for some flexibility for determining who is directly affected.⁶⁴
107. The Appellant submits that the Standing Decision fails to demonstrate flexibility on the part of the Board, and rather the reasons provided by the Board in this case reflect a very rigid interpretation of 'directly affected', an interpretation which the Board has standardized to an extent which unlawfully fetters the discretion provided to the Board by section 95(5) of EPEA. While the terms of EPEA support the 'impact of a proposed project on the use of a natural resource' as a relevant factor in the determination of whether a prospective appellant is 'directly affected', the Appellant submits there is nothing in EPEA to support that this factor should be the only or determinative factor.
108. The purposes of EPEA include a much broader range of concerns than simply the impact of an activity on a natural resource, and these additional concerns include environmentally responsible economic development, the protection of human health, and the protection of the environment. The term 'environment' is defined in EPEA to encompass air, land, water, all layers of the atmosphere, all organic and inorganic matter and living organisms, and

⁶² Standing Decision at paras 151, 166, **Appeal Record at pages F45, F50.**

⁶³ *Pembina Institute v Alberta (Environment and Sustainable Resources Development)*, 2013 ABQB 567 at para 45, **Appellant's Authorities Tab 22.**

⁶⁴ Standing Decision at para 116, **Appeal Record at page F31.**

the interacting natural systems that include each of these foregoing components. The purpose of EPEA is much broader than simply to regulate the impact of an activity on the use of a natural resource.⁶⁵

109. The Appellant submits that the interpretation of 'directly affected' given by the Board in its Standing Decision is unduly restrictive and narrow, and thus unreasonable because it is inconsistent with both the purpose of EPEA and the role of the Board under EPEA as a statutory appellate body. More particularly, this narrow interpretation by the Board:

- a. results in a very narrow class of prospective appellants who can meet the Board's test for standing to commence an appeal under EPEA;
- b. disregards any potential for a direct impact on a prospective appellant, other than where that impact is on a natural resource actually used by a prospective appellant;
- c. precludes any appeal from a person who (1) has demonstrated expertise to bear on the environmental impacts of a proposed project, (2) can establish that the project has the potential to have some impact on them, economic or otherwise, and (3) can establish that the project may have an environmental or human health impact;
- d. results in the need for parallel proceedings (at the Board and in the superior courts) to supervise the exercise of statutory authority by the Director.

110. The Appellant submits it is unlawful for a statutory tribunal to interpret its power to grant standing in a way that effectively defeats the scheme of its enabling legislation or one that cannot be supported by a reasonable interpretation of how the tribunal's governing legislative scheme was intended to operate.⁶⁶

⁶⁵ EPEA, ss 1(t), 2, **Appellant's Authorities Tab 1.**

⁶⁶ *Lukács* at paras 12-20, **Appellant's Authorities Tab 4.**

111. The Appellant respectfully submits the Chambers Justice erred by ruling it is reasonable for the Board to rule that an adverse impact cannot qualify a person as 'directly affected' under Part 4 of EPEA unless that adverse impact is in relation to that person's actual use of a natural resource.

PART 5 – RELIEF SOUGHT

112. The Appellant seeks an Order:

- a. granting this Appeal;
- b. quashing the Standing Decision;
- c. ruling that EPEA does not preclude the Board from hearing a public interest appeal filed by a person who is not directly affected by the Amending Approval;
- d. remitting the matter back to the Board to re-decide the matter of the Appellant's standing to appeal the merits of the Amending Approval in accordance with EPEA and the direction of this Honourable Court;
- e. granting costs to the Appellant, including the recovery of costs paid to Secure Energy in relation to the decision by the Chambers Justice.

The estimated time for oral argument is 45 minutes.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 10th DAY OF MAY 2019.



Shaun Fluker
Counsel for the Appellant,
Normtek Radiation Services Ltd.

PART 6 – TABLE OF AUTHORITIES

TAB

- 1 *Environmental Protection and Enhancement Act*, RSA 2000, c E-12
- 2 Alberta, Legislative Assembly, Hansard 22nd Leg, 4th Sess (11 May 1992 and 4 June 1992) at 805, 1184 (Ralph Klein)
- 3 *Quebec (Attorney General) v. Gu  rin*, 2017 SCC 42, [2017] 2 SCR 3
- 4 *Delta Air Lines Inc. v. Luk  cs*, 2018 SCC 2, [2018] 1 SCR 6
- 5 *Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299, 341 DLR (4th) 710
- 6 *Maple Lodge Farms Ltd. v. Canada*, [1982] 2 SCR 2, 137 DLR (3d) 558
- 7 *Kanthasamy v. Canada (Citizenship and Immigration)*, 2015 SCC 61, [2015] 3 SCR 909
- 8 *Chandler v. British Columbia (Superintendent of Motor Vehicles)*, 2018 BCCA 300, [2018] BCJ No 1439
- 9 *Lac La Biche (County) v. Lac La Biche (County) (Subdivision and Development Appeal Board)*, 2014 ABCA 305, 580 AR 368
- 10 *Tomlinson and Jackson v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development, re: County of St. Paul* (14 September 2015), Appeal Nos. 14-021-022 and 15-011-012-ID2 (A.E.A.B.)
- 11 *Water Matters Society of Alberta et al. v. Director, Southern Region, Operations Division, Alberta Environment and Water, re: Western Irrigation District and Bow River Irrigation District* (10 April 2012), Appeal Nos. 10-053-055 and 11-009- 014-D (A.E.A.B.)
- 12 *Gadd v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (8 October 2004), Appeal Nos. 03-150, 03-151 and 03-152-ID1 (A.E.A.B.)
- 13 *Interpretation Act*, RSA 2000, c I-8

- 14 *Telus Communications Inc. v Wellman*, 2019 SCC 19, [2019] SCJ No 19
- 15 *Environmental Protection and Enhancement Act Amendment Act*, 1996, SA 1996, c 17
- 16 *Bildson v Acting Director of North Eastern Slopes Region, Alberta Environmental Protection, re Smoky River Coal*, (19 October 1998) Appeal No. 98-230-D (A.E.A.B.)
- 17 *Doull v Director, Northern Region, Regional Services, Alberta Environment re: Inland Cement Limited* (11 October 2002), Appeal Nos. 02-018-041, 047, 060, 061, 073, and 074-IDI (A.E.A.B.)
- 18 *Altus Group (Limited) v Calgary (City)*, 2015 ABCA 86, 382 DLR (4th) 455
- 19 *Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd.* (24 January 2005), Appeal Nos. 03-116 and 03-118-121-ID2 (A.E.A.B.)
- 20 *Crevier v. A.G. (Québec) et al.*, [1981] 2 SCR 220, [1981] SCJ No 80
- 21 *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, [2012] 2 SCR 524
- 22 *Pembina Institute v. Alberta (Environment and Sustainable Resources Development)*, 2013 ABQB 567, [2013] AJ No 1047