

July 25, 2017

Roger Bilodeau, QC
Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario K1A 0J1

Dear Sir:

Re: *Orphan Well Association and Alberta Energy Regulator v.
Grant Thornton Limited and Alberta Treasury Branches*
SCC File #37627

I am counsel for the Minister of Justice and Solicitor General of Alberta (Alberta). Alberta is a statutory intervener pursuant to s. 24 of the *Judicature Act*, RSA 2000, c J-2 and participated in the courts below. This letter is in support of the Application for Leave to Appeal and Motion to Expedite filed by the Orphan Well Association and Alberta Energy Regulator on June 23, 2017.

It is Alberta's position that this matter is of national importance as the Alberta Courts' (Queen's Bench and majority of the Court of Appeal) broad interpretation of scope and purpose of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*) and s. 14.06 in particular, impairs or interferes with critical provincial regulatory functions in a manner that is inconsistent with the constitutional division of legislative powers and the balance of confederation. The Supreme Court's clarification regarding the interpretation of the *BIA* and application of the doctrines of paramountcy and interjurisdictional immunity is desirable.

In particular, the matter is of national importance because:

1. The majority of the Alberta Court of Appeal's interpretation of s. 14.06 of the *BIA* will have ramifications across Canada. The provinces of Saskatchewan and British Columbia intervened at the Alberta Court of Appeal and support the application for leave filed by the Orphan Well Association and Alberta Energy Regulator. As set out in the supporting affidavits of Saskatchewan and British Columbia, each of these provinces have natural resource regulatory regimes similar to Alberta's regime, and similar interference with their respective regulatory functions can be expected.
2. The question as to who should be held responsible for end of life obligations and environmental liabilities associated with provincial natural resource regulatory regimes arises in this matter. Concerns relating to this issue are evident where an argument is made that there is conflict between the *BIA* and provincial statutes which are premised on the "polluter pay principle".

3. The majority of the Alberta Court of Appeal's conclusion fails to take into account the fact that the licence holder generally does not own the land on which the well is located. There is no case law in the approximately 20 years since s. 14.06 was added to the *BIA* which applies s. 14.06 to anything other than land owned by the debtor. The majority of the Alberta Court of Appeal's decision is a departure in that regard from *Re AbitibiBowater Inc.*, 2012 SCC 67, *Re Northstar Aerospace Inc.*, 2013 ONCA 600, *Re Nortel Networks Corp.*, 2013 ONCA 599 and *Panamericana de Bienes y Servicios SA v Northern Badger Oil & Gas Ltd.*, 1991 ABCA 181.

Justice Martin, in dissent, found that well licenses were not "real property" as contemplated by s. 14.06 of the *BIA*. She found that s. 14.06 is restricted to renunciation of "real property of the debtor" and that the Crown is granted a super-priority over contaminated real property of the debtor for costs incurred in remedying environmental damage affecting that real property. As the land on which oil and gas wells are situated is generally owned by private land owners or the Crown rather than by the debtor, resolution of the conflicting interpretations of s. 14.06 will be of assistance to regulators, insolvency practitioners, debtors, lenders and landowners.

Alberta respectfully requests that the Application for Leave to Appeal and Motion to Expedite filed by the Orphan Well Association and Alberta Energy Regulator be granted.

Yours truly,



Lillian Riczu
Barrister and Solicitor

cc: Marie-France Major, Ottawa Agent for Counsel for the Applicant,
Orphan Well Assn., and the Applicant, Alberta Energy Regulator.

Tom Cumming and Jeffrey Oliver, Counsel for the Respondent, Grant Thornton Limited

Kelly Bourassa and Ryan Zahara, Counsel for the Respondent, Alberta Treasury Branches

James Fyfe, Counsel for the Intervener, Attorney General of Saskatchewan (courtesy copy)

Aaron Welch, Counsel for the Intervener, British Columbia (Natural Gas Development)
and the British Columbia Oil and Gas Commission (courtesy copy)

L.L. Manning, Counsel for the Intervener, Canadian Association of Petroleum Producers (courtesy copy)

C.E. Hanert and A.C. Maerov, Counsel for the Intervener, Canadian Association of Insolvency and
Restructuring Professionals (courtesy copy)