SCC File No: 37627

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA)

BETWEEN:

ORPHAN WELL ASSOCIATION
ALBERTA ENERGY REGULATOR

Appellants

-and-

GRANT THORNTON LTD
ALBERTA TREASURY BRANCHES

Respondents

-and-

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ATTORNEY GENERAL FOR SASKATCHEWAN
MINISTER OF JUSTICE AND SOLICITOR GENERAL OF ALBERTA
ECOJUSTICE CANADA SOCIETY
CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS
GREENPEACE CANADA
ACTION SURFACE RIGHTS ASSOCIATION
CANADIAN ASSOCIATION OF INSOLVENCY AND RESTRUCTURING PROFESSIONALS
CANADIAN BANKERS' ASSOCIATION

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(Rule 42 of the Rules of the Supreme Court of Canada)

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PART I – OVERVIEW AND FACTS

1. The Attorney General for Saskatchewan ("Attorney General") intervenes in this matter pursuant to a Notice of Intervention served and filed on December 7, 2017.

2. The Attorney General adopts the facts set out in the Appellants' Joint Factum.

3. The Attorney General submits that there are at least four reasons why the provincial and federal laws at issue can and should be interpreted harmoniously:

a. **Federalism**: Federalism mandates that the provinces be understood and treated as partners in Confederation, with powers as ample and plenary as those of Parliament, and with the freedom to act within their spheres of jurisdiction. Parliament is presumed to respect this constitutional reality, and s. 14.06 of the *Bankruptcy and Insolvency Act* (BIA) should be interpreted accordingly. Parliament should be understood as intending to respect provinces acting in their regulatory capacity, not as creditors subject to federal bankruptcy proceedings, but as partners in Confederation acting within their jurisdiction.

b. **Cooperative federalism**: Cooperative federalism imparts a suite of principles favouring harmonious interpretations of provincial and federal law, and discouraging constraints on provincial power. A harmonious interpretation is readily available in this matter, as demonstrated in Justice Martin's dissenting judgment below. Conditions placed on licence transfers, for example, are not claims subject to bankruptcy proceedings, and they may affect the realizable value of a bankrupt's estate. Bankruptcy jurisdiction does not create a plenary zone of immunity from the inevitable effects of provincial jurisdiction.

c. **Presumption that federal laws are consistent**: Parliament is presumed not to enact inconsistent statutes. However, finding conflict between the BIA and the provincial regime would result in conflict between the BIA and provisions of the *National Energy Board Act* that postdate s. 14.06 of the BIA. It would also undermine the very same environmental and public safety regime at issue, which applies on Indian reserves as federal law by operation of the *Indian Oil and Gas Regulations*. It would put Canada's honour at stake for it to prefer the interests of third parties over environmental protection and public safety on Indian reserves.

d. **Canada's silence**: Canada did not participate in either of the lower courts and has chosen not to participate in this appeal. If the provincial regime conflicts with or frustrates the purpose of the BIA, it is reasonable to expect Canada to say so. Canada's silence militates in favour of reading the provincial and federal laws harmoniously, in line with Justice Martin's decision below.

PART II – POSITION ON THE CONSTITUTIONAL QUESTIONS

4. This Factum focuses on the first and second constitutional questions. The Attorney General submits that those questions should be answered in the negative. The provincial regime at issue does not conflict with or frustrate the BIA.

5. With respect to the third question, the Attorney General says that the BIA should be read narrowly so as to avoid impairing the core of provincial jurisdiction protected by the doctrine of interjurisdictional immunity.

PART III - ARGUMENT

A. Saskatchewan's Interest

6. While the Attorney General only very rarely intervenes in appellate courts of other provinces, he intervened before the Alberta Court of Appeal because the issues directly implicate Saskatchewan's continued ability to properly regulate the oil and gas industry in the Province.

7. Saskatchewan's regulatory regime mirrors Alberta's: "licensee" is defined in Saskatchewan's *Oil and Gas Conservation Act* to include receivers and trustees; licensees are responsible for the reclamation of well sites; and licence transfers are subject to provincial approval. Saskatchewan's liability rating program and Orphan Fund were modelled on Alberta's regime. Saskatchewan shares the Appellants' concerns that the majority decision in the Court below, if allowed to stand, will negatively impact the continued viability of such programs.

B. Four Reasons to Find Harmony

8. The Attorney General submits that there are at least four important reasons why the federal and provincial laws at issue can and should be read together harmoniously.

a. Federalism

9. In *Reference re Secession of Quebec* this Court characterized the principle of federalism as "the lodestar by which the courts have been guided" and which "recognizes the diversity of the component parts of Confederation, and the autonomy of the provincial governments to develop their societies within their respective spheres of jurisdiction."[1]

[1] *Reference re Secession of Quebec*, [1998] 2 SCR 217 at paras 56 & 58.

10. Parliament must always be taken as intending to respect this constitutional reality. As Justice Gascon held in *Alberta (Attorney General) v Moloney*, "[i]t is presumed that Parliament intends its laws to co-exist with provincial laws."[2] That presumption is particularly important in the bankruptcy context because so much of the law relating to debtor, creditor, property and security interests is provincial. The bankruptcy regime must of necessity dovetail harmoniously with provincial law.

11. The importance of the federalism principle for this matter is informed by the provincial powers at stake. Justice Martin correctly held that Alberta's regulatory regime falls both within provincial jurisdiction over property and civil rights and provincial authority to regulate lands and resources, found in ss. 92(13) and 92A of the *Constitution Act, 1867*, respectively.[3]

12. These are vital heads of provincial power. Professor Hogg writes that jurisdiction over property and civil rights predates Confederation and has roots running back as far as the *Quebec Act* of 1774. It confers broad authority which "is by far the most important of the provincial heads of power."[4]

13. Section 92A confers exclusive provincial legislative authority in relation to the exploration, development, conservation and management of non-renewable resources. It operates in conjunction with s. 92(5), which confers exclusive provincial jurisdiction over the management and sale of public lands. It also operates with section 109, which granted ownership in lands, mines, minerals and royalties to the original provinces. Section 109 was incorporated into the *Natural Resources Transfer Agreements* to put Alberta, Saskatchewan and Manitoba in the same position in relation to lands and resources as the original provinces.

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[2] *Alberta (Attorney General) v Moloney*, 2015 SCC 51 at para 27.
[3] *Orphan Well Association v Grant Thornton Limited*, 2017 ABCA 124 at para 108.
[4] P.W. Hogg, *Constitutional Law of Canada* (looseleaf), 5th ed. (Toronto, Carswell, 2007) at 21-1 to 21-3.

14. The underlying importance of this provincial jurisdiction is reflected in the Parliamentary Debates leading to the *British North America Act, 1867*, wherein the Hon. Hector-Lewis Langevin stated:

> I may add that, under Confederation, all questions relating to the colonization of our wild lands, and the disposition and sale of those same lands, our civil laws and measures of a local nature – in fact, everything which concerns and affects those interests which are most dear to us as a people, will be reserved for the action of our local legislatures […].[5]

15. Where, as here, a province seeks to protect the public interest by regulating property and civil rights and managing lands and resources, it acts within the core of its charge under the Constitution. Section 14.06 should, and can, be interpreted in a way that respects that core.

b. Cooperative Federalism

16. This Court has recognized for years that principles are needed to restrict the application of doctrines such as federal paramountcy, which tend to threaten the healthy functioning of Canada's federal system.

17. This concern was expressed, for example, in *Canadian Western Bank v Alberta* where this Court stated that such doctrines "must facilitate, not undermine, what this Court has called co-operative federalism."[6] The Court cited with approval Justice Iacobucci's dissenting opinion in *Husky Oil Operations Ltd. v Minister of National Revenue*, in which he held that allowing the doctrine of paramountcy to render inoperative provincial laws "which have any effect on the bankruptcy process is to undermine the theory of cooperative federalism upon which

[5] *Parliamentary Debates on the Subject of Confederation*, 8th Parl, 3rd Sess at p. 373, Hunter, Rose & Co., Parliamentary Printers: Quebec, 1865.
[6] *Canadian Western Bank v Alberta,* 2007 SCC 22 at para 24, [2007] 2 SCR 3.

(particularly post-war) Canada has been built."[7] In *NIL/TU,O Child and Family Services Society v B.C. Government and Services Union*, Justice Abella observed that "[t]oday's constitutional landscape is painted with the brush of co-operative federalism" which accepts "the inevitability of overlap between the exercise of federal and provincial competencies"[8]

18. In *Saskatchewan (Attorney General) v Lemare Lake Logging*, cooperative federalism was held to impart a number of interrelated imperatives, including:

- Requiring paramountcy to be narrowly construed and applied with restraint;
- Favouring harmonious over conflicting interpretations;
- Allowing interplay and overlap between provincial and federal law;
- Avoiding unnecessary constraints on provincial jurisdiction;
- Imposing a high burden of proof for finding conflict.[9]

19. These imperatives should guide the determination of this appeal.

i. Conflict is Avoidable

20. The Attorney General agrees with Justice Martin's finding that the provincial regime can operate harmoniously with s. 14.06. He submits that, in particular, the provincial regulation of licence transfers does not conflict with or frustrate the BIA.

21. Licence transfers are evaluated by the regulator on the totality of the behaviour of licensees, both transferor and transferee, with regard to their collection of licences. This

[7] *Husky Oil Operations Ltd. v Minister of National Revenue*, [1995] 3 SCR 453 at para 162 (relied on in both the Court's majority and concurring reasons in *Moloney* at paras 27 & 104).
[8] *NIL/TU,O Child and Family Services Society v B.C. Government and Services Union*, 2010 SCC 45 at para 42, [2010] 2 SCR 696. Quoted with approval in *Moloney* at para 104.
[9] *Saskatchewan (Attorney General) v Lemare Lake Logging*, 2015 SCC 53 at paras 20-26, [2015] 3 SCR 419.

represents a set of global considerations intended to apply in all scenarios to each licensed entity as a whole. Rather than imposing liability, the regime allows the regulator and the proposed licence transferor freedom to determine their next moves. Trustees have the option of seeking to transfer licences within the provincial regime. If a trustee (or any licence holder) decides that it does not make economic sense to do so, it may proceed as it deems appropriate.

22. Harmony is not theoretical here. The provincial and federal regimes have worked together in practice for decades. As Justice Martin observed:

> The fact that for over two decades trustees in bankruptcy have been able to discharge their mandates while also respecting the terms of the provincial oil and gas licences acquired through the estate suggests that these federal and provincial obligations are, in the language of paramountcy, not mutually exclusive. End of life obligations and bankruptcy have lived and operated together and their concurrent application has not then, and does not now, produce any genuine inconsistency.[10]

23. The regulator is not a creditor and any costs required to meet licence transfer requirements are not debts owing to it. Posting security may (or may not) be a condition of any transfer approval, whether in or outside of the bankruptcy process. It is not a claim subject to bankruptcy proceedings. Justice Martin correctly held that:

> The requirement to post security as part of the licence transfer is not, in my view, a "debt" owed to the AER or the province. It is part of the conditions attached to the licence. The AER does not become a creditor when it seeks to enforce the licence conditions […].[11]

24. This result is consistent with the principle that trustees step into the debtor's shoes, and should not be put in a better position than the debtor prior to bankruptcy.[12] The corollary is that bankruptcy should not place creditors in a better position or give them greater access to their

[10] *Orphan Well Association v Grant Thornton Limited*, 2017 ABCA 124 at para 234.
[11] *Ibid* at para 187.
[12] *Saulnier v Royal Bank of Canada*, 2008 SCC 58 at paras 49 and 50, [2008] 3 SCR 166.

debtors' assets.[13] If Parliament intended a contrary result under s. 14.06, it is not readily discernable.

25. If, however, the BIA is interpreted as allowing assets to be broken up for the purpose of side-stepping provincial license transfer requirements, then creditors are put in a substantially better position than they were prior to insolvency, at the expense of the Orphan Fund and ultimately provincial taxpayers. That result is inimical to cooperative federalism.

ii. Provincial Laws Can Affect Bankruptcy

26. In *Husky Oil*, Justice Iacobucci (dissenting) reviewed a number of cases in which provincial laws were allowed to affect the value of assets for distribution.[14] This Court's decision in *GMAC Commercial Credit Corporation - Canada v T.C.T. Logistics Inc.* is a more recent example.[15] The Court held that a provincial labour relations board has jurisdiction over union successorship applications under provincial law when a trustee is selling estate assets, notwithstanding potential impacts of the board's decision on a receiver's decision about how best to maximize stakeholder value.[16]

27. This finding is relevant here because the attachment of a collective agreement to the businesses or parts of the business being disposed of by a receiver is likely to significantly affect its realizable value. In allowing unions to seek successor employer designation from the transferee receiving an asset during bankruptcy proceedings, the Court allowed the provincial scheme to regulate the rights of employers and employees in spite of its potential effects on insolvency proceedings.

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[13] *Royal Bank of Canada v North American Life Assurance Co.*, [1996] 1 SCR 325 at para 16.
[14] *Husky Oil*, *supra* at paras 142-147.
[15] *GMAC Commercial Credit Corporation - Canada v T.C.T. Logistics Inc.*, 2006 SCC 35, [2006] 2 SCR 123.
[16] At para 78.

28. Provinces may likewise regulate licence transfers, even if it might impact a trustee's decision on how best to maximize stakeholder value. The licence transfer regime should be added to the list of provincial regulatory measures that may permissibly affect the BIA.

iii. The Public Interest

29. The provincial laws at issue form part of a regulatory regime intended to protect the public interest in relation to the environment and public safety. In *Canadian Western Bank*, this Court admonished against allowing interjurisdictional immunity to block "the application of measures which are taken to be enacted in furtherance of the public interest."[17] The same concern should limit the application of federal paramountcy in this matter, and discourage the public interest from being subordinated to the interests of creditors or trustees under the BIA.

30. The public interest was preserved, for example, in the paramountcy case of *Hover (Re)*. The Alberta Court of Appeal in that matter distinguished a regulatory body fulfilling its mandate from a scheme aimed at recovering debts. The Court held that a professional association could suspend a bankrupt's licence to practice dentistry based on the non-payment of a fine previously imposed as professional discipline. It held that such sanctions are not a colourable attempt at debt collection, but a normal and necessary means of regulating the profession.[18]

31. Likewise, the regulatory regime at issue is not a colourable attempt to recover debts outside of the BIA, or reorder priorities. Rather, it provides criteria that all licence transfer applications must meet in order to maintain the integrity of the regulatory regime. In *Northern Badger*, the Alberta Court of Appeal quite rightly characterized licence conditions in the oil and gas context as public law duties.[19] The mandate is not reducible to debt collection.

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[17] *Canadian Western Bank, supra* at para 37.
[18] *Hover (Re)*, 2005 ABCA 101 at paras 31-47.
[19] *PanAmericana de Bienes y Servicios, S.A. v Northern Badger Oil and Gas Ltd.*, 1991 ABCA 181 at para 33.

c. Presumption that Federal Laws are Consistent

i. National Energy Board Act

32. Before the Alberta Court of Appeal, the Attorney General argued that finding the provincial regime to conflict with the BIA would create an anomaly in relation to comparable federal environmental law.

33. For example, the Attorney General referred the Court to the *National Energy Board Act*.[20] In 2015, Parliament added a number of provisions to the *Act* including s. 48(1.1), which empowers the National Energy Board (NEB) to order companies to take measures in respect of abandoned pipelines it considers necessary for safety or environmental protection; s. 48.11, which expressly incorporates the "polluter pays" principle; sections 48.12, 48.13 and 48.14, which address companies' liability and financial requirements, and allows for the creation of an industry "pooled fund;" and sections 48.15 and 48.16 which, among other things, grant the NEB power to order companies to reimburse federal and provincial institutions, as well as Aboriginal governments, for their costs in remediating oil spills.[21] Of particular interest is s. 29(3), which deems receivers and trustees to be companies for purposes of the *Act.* Finally, licence transfers must be authorized by the NEB, and are subject to existing licence conditions and any additional conditions the NEB and the Governor in Council consider necessary or desirable.[22]

34. Finding that the provincial regime conflicts with or frustrates the BIA would implicate these comparable provisions of the *National Energy Board Act*. The Attorney General argued

[20] *National Energy Board Act*, RSC 1985, c N-7.
[21] *Pipeline Safety Act*, SC 2015 c 21, ss. 15 & 16.
[22] *National Energy Board Act*, *supra* at ss. 21.1 and 21.2.

before the Court of Appeal that this result would run afoul of the presumption that Parliament does not intend to enact inconsistent statutes.[23]

35. Justice Slatter held that s. 14.06 was intended to prevail over such federal environmental laws by operation of the phrase "notwithstanding anything in any federal or provincial law."[24] However, that priority would apply (if at all, given the doctrine of implied repeal) only in the event of a conflict. Parliament does not intend its laws to conflict in the first place, and s. 14.06 is not an invitation to find conflict. It seems implausible that, in 2015, Parliament added provisions to the *Act* destined to be thwarted by the BIA. It would be anomalous for Parliament to have intended the BIA to undermine comparable provincial laws.

36. Further, this Court recently held that the NEB is obligated to comply with s. 35 of the *Constitution Act, 1982*.[25] Allowing the BIA to override the NEB's powers would allow remediation obligations to be side-stepped in bankruptcy. It could hamstring the NEB from enforcing the very conditions that were needed to satisfy the Crown's honourable obligations before permitting the project.[26] It is unlikely Parliament intended that result.

ii. Indian Oil and Gas Regulations

37. The Attorney General also referred the Court of Appeal to s. 4(c) of the federal *Indian Oil and Gas Regulations, 1995*.[27] That provision incorporates by reference "all provincial laws applicable to non-Indian lands that relate to the environment or to the exploration for, or

[23] *Lamare Lake*, *supra* at para 71.
[24] *Orphan Well Association*, *supra* at para 28.
[25] *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017 SCC 40 at paras 27-29; *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, 2017 SCC 41 at paras 29 & 34.
[26] I.e., see *Clyde River*, *supra*, at paras 32-34.
[27] *Indian Oil and Gas Regulations, 1995*, SOR/94-753.

development, treatment, conservation or equitable production of, oil and gas and that are not in conflict with the [*Indian Oil and Gas*] *Act* or these Regulations."

38. By operation of s. 4(c), the very same provincial regime at issue operates as federal law on Indian reserves in Alberta. Saskatchewan's parallel regime applies on Indian reserves in Saskatchewan. It is a concrete example of cooperative federalism that Saskatchewan administers that regime (including its liability rating program) on-reserve on Canada's behalf. It would be anomalous for s. 14.06 to render inoperative provincial laws that, as incorporated federal laws, serve to protect the environment and public safety on Indian reserves.

39. This Court's decision in *Marine Services International Ltd. v Ryan Estate* is apposite. At issue was whether a statutory bar in Newfoundland and Labrador's *Workplace Health, Safety and Compensation Act* (WHSCA) conflicted with the federal *Marine Liability Act* (MLA), which creates a federal maritime tort regime. This Court refused to find conflict, given the existence of comparable federal workers compensation legislation:

> There is a presumption that Parliament does not enact related statutes that are inconsistent with one another […]. It would be inconsistent for Parliament to enact statutory bars in the *GECA* and the *MSCA* [federal workers compensation statutes] that do not preclude a negligence action under the *MLA*. These provisions must be read harmoniously. […] If this Court were to conclude that s. 6(2) of the *MLA* did not accommodate the statutory bar in s. 44 of the WHSCA [the provincial *Act*], it would necessarily be saying that s. 6(2) of the *MLA* also does not accommodate the statutory bars in the *GECA* and the *MSCA*. Based on the presumption of consistency, this cannot be.[28]

40. This conclusion imposes itself here with greater force. If the provincial regime at issue is found to conflict with s. 14.06, so too would that very same regime that is incorporated as federal

[28] *Marine Services International Ltd. v Ryan Estate*, 2013 SCC 44 at para 81, [2013] 3 SCR 53 [Emphasis added].

law under the *Indian Oil and Gas Regulations*. As in *Ryan Estate* (and *Lemare Lake*, for that matter), consistency should prevent this result.[29]

41. There is more to this issue. Indian reserves hold a special place for Canada's administration of federal lands. Canada has specific exclusive jurisdiction over "lands reserved for Indians" under s. 91(24) of the *Constitution Act, 1982*. Section 18 of the *Indian Act* provides that reserves are held by Her Majesty "for the use and benefit of the respective bands."[30] Indian reserves were set aside by Canada pursuant to its obligation to do so under the Treaties, including the numbered Treaties covering western Canada, which have constitutional status under s. 35 of the *Constitution Act, 1982*.

42. Not surprisingly, Canada has been found to owe fiduciary duties to Bands in administering reserve lands. In *Wewaykum Indian Band v Canada*, this Court described that duty as requiring Canada to act "with loyalty, good faith, full disclosure appropriate to the subject matter and with 'ordinary' diligence in what it reasonably regarded as the best interests of the beneficiaries."[31] Canada is also presumed to act honourably and in accordance with its obligations.[32] Section 14.06 should therefore be interpreted narrowly to avoid the potential of negatively impacting the operation of laws that serve to protect the environment and public safety on reserve lands.

43. In the other direction, statutory provisions relating to Indians are to be read generously.[33] This principle has been applied specifically in relation to the *Indian Oil and Gas Act* and *Regulations.* In *Stoney Tribal Council v PanCanadian Petroleum Ltd.*, the Alberta Court of

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[29] *Lemare Lake, supra* at para 71.
[30] *Indian Act*, RSC 1985, c I-5.
[31] *Wewaykum Indian Band v Canada*, 2002 SCC 79 at para 97, [2002] 4 SCR 245.
[32] *R v Badger*, [1996] 1 SCR 771 at para 41.
[33] *Badger, supra* at para 41. See also, i.e., *Nowegijick v The Queen*, [1983] 1 SCR 29 at 36.

Queen's Bench held that those statutory instruments "impose a trust relationship on the Queen" and are subject to a liberal interpretive approach.[34]

44. While *Stoney Tribal Council* concerned royalty payments, a generous interpretive approach should equally apply here. Section 4(c) incorporates provincial legislation that ensures that that the environmental and public safety obligations of third parties on reserves, whether companies or trustees in bankruptcy, are accounted for. That legislation should be read generously in favour of those objectives. The federal Crown should not be taken to have intended the interests of creditors to take precedence on reserve lands. It would be anomalous for the BIA to render inoperative the very same laws that apply off reserve.

45. Finally, the Attorney General refers this Court to the *First Nations Oil and Gas and Moneys Management Act* (FNOGMMA).[35] As indicated in its preamble, that *Act* provides Bands with the option of "managing and regulating oil and gas exploration and exploitation and of receiving moneys otherwise held for them by Canada." This legislation is reflective of Canada's recognition of "the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*."[36] The *Act* allows Bands to pass their own laws for regulating oil and gas development on reserve. It also allows Bands to incorporate provincial oil and gas laws for that purpose.[37]

46. The majority decision below would create a disincentive for Bands to take advantage of this legislation, particularly when Canada is expressly relieved of liability in relation to the

[34] *Stoney Tribal Council v PanCanadian Petroleum Ltd.*, 1998 ABQB 286 at paras 64 & 81, varied but not on this point: 2000 ABCA 209.
[35] *First Nations Oil and Gas and Moneys Management Act*, SC 2005, c 48.
[36] *The Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Self-Government*: see http://www.aadnc-aandc.gc.ca/eng/1100100031843/1100100031844.
[37] Sections 35 & 42.

implementation of the Band's laws.[38] If s. 14.06 is allowed to burden landowners or provincial taxpayers with remediation costs, it could likewise burden a Band operating under FNOGMMA. Such a disincentive is inconsistent with FNOGMMA's purpose and would make Canada's acceptance of a right to self-government ring hollow. This Court should read the BIA so as to avoid that result.

d. Canada's Silence

47. Canada did not intervene in the lower courts in this matter. While Canada filed a Notice of Intervention in this Court, it has since discontinued its participation. This argues against finding a conflict between the provincial and federal laws at issue. If the provincial regime conflicted with or frustrated the BIA, it is reasonable to expect Canada to say so.

48. The Superintendent of Bankruptcy was a respondent in *407 ETR Concession Co. v Canada (Superintendent of Bankruptcy)* and intervened in *Moloney* to contest the operability of the provincial regimes at issue in those matters.[39] However, neither Canada nor the Superintendent has seen fit to contest the provincial regime's operability in this matter.

49. This Court has cautioned against invaliding a provincial law when Canada does not contest its validity.[40] The Attorney General submits that such caution is likewise warranted in paramountcy cases, where the issue is whether a provincial law conflicts with or frustrates a federal law. Canada's silence militates in favour of reading the provincial and federal laws at issue harmoniously, in line with Justice Martin's dissenting judgment.

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[38] Section 27.
[39] *407 ETR Concession Co. v Canada (Superintendent of Bankruptcy)*, 2015 SCC 52, [2015] 3 SCR 397.
[40] *OPSEU v Ontario(Attorney General)*, [1987] 2 SCR 2 at 19. See also *Kitkatla Band v British Columbia (Minister of Small Business, Tourism and Culture)*, 2002 SCC 31 at para 72, [2002] 2 SCR 146.

PART IV – COSTS

50. The Attorney General does not seek costs and asks that no costs be ordered against him.

PART V – NATURE OF THE ORDER SOUGHT

51. The Attorney General requests no more than ten minutes for oral argument.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED February 1st, 2018, at Regina, Saskatchewan.

(S) Sylvie Labbé, for:

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R. James Fyfe
Counsel for the Intervener
The Attorney General for Saskatchewan

PART VI - AUTHORITIES

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