Court File No. CV-21-00662483-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLEARBEACH RESOURCES INC. AND FORBES RESOURCES CORP.

Applicants

RESPONDING MOTION RECORD

EUGENIE GAISWINKLER

(Party to a Gross Overriding Royalty Agreement)

MCKENZIE LAKE LAWYERS LLP
Barristers
140 Fullarton Street, Suite 1800
London ON N6A 5P2

Stuart R. Mackay (24517U)
stuart.mackay@mckenzielake.com
Tel: 519-672-5666

Lawyers for Eugenie Gaiswinkler
Party to a Gross Overriding Royalty Agreement

Court File No.: CV-21-00662483-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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Applicants

SERVICE LIST

As at June 21, 2021	
BENNETT JONES LLP 3400 One First Canadian Place P.O. Box 130 Toronto, ON, M5X 1A4 Main: (416) 863-1200 Fax: (416) 863-1716 *Counsel to Clearbeach Resources Inc. and Forbes Resources Corp.*	**Richard B. Swan** (416) 777-7479 swanr@bennettjones.com **Raj Sahni** (416) 777-4804 sahnir@bennettjones.com **Joshua Foster** (416) 777-7906 fosterj@bennettjones.com
AIRD & BERLIS LLP Brookfield Place 181 Bay St #1800 Toronto, ON M5J 2T9 *Counsel to Pace Savings & Credit Union Limited*	**D. Robb English** (416) 865-4748 renglish@airdberlis.com
MINISTRY OF THE ATTORNEY GENERAL 8-720 Bay Street Toronto, ON M7A 2S9	**Ananthan Sinnadurai** Crown Law Office – Civil (416) 910-8789 ananthan.sinnadurai@ontario.ca

DEPARTMENT OF JUSTICE CANADA 3400-130 King Street, West Toronto, ON M5X 1K6	**Diane Winters** (416) 973-3172 diane.winters@justice.gc.ca **Pat Confalone** Pat.Confalone@justice.gc.ca
MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 777 Bay Street, 11th Floor Toronto, ON M5G 2C8	**Steven Groeneveld** (905) 431-8380 steven.groeneveld@ontario.ca
SCOTT PETRIE LLP 200-252 Pall Mall Street London, ON N6A 5P6 Fax: (519) 433-7909 *Counsel to Crich Holdings and Buildings Limited*	**Angelo C. D'Ascanio** (519) 433-5310 Ext. 247 adascanio@scottpetrie.com
CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9 *Counsel to CIBC Mortgages Inc.*	**Christopher Staples** (416) 218-1147 chris@chaitons.com
LOOPSTRA NIXON LLP Woodbine Place 135 Queens Plate Drive, Suite 600 Toronto, ON M9W 6V7 *Counsel to the Monitor*	**Graham Phoenix** (416) 748-4776 gphoenix@loonix.com **Thomas Lambert** (416) 748-5145 tlambert@loonix.com
MNP LTD. 1002-148 Fullarton Street London, ON N6A 5P3 *The Monitor*	**Rob Smith** (519) 964-2212 rob.smith@mnp.ca

FORD CREDIT CANADA COMPANY 17187 114 Ave, NW Edmonton, AB T5J 5C7 *Secured Party*	
DICITUR HOLDINGS LIMITED 560 Wellington St 2nd Floor London, ON N6A 3R4 *Party to an Excluded Contract*	jcrich@auburndev.com
THE CORPORATION OF THE MUNICIPALITY OF BAYHAM 56169 Heritage Line, P.O. Box 160 Straffordville, ON N9J 1Y0 *Creditor*	**Lorne James** ljames@bayham.on.ca bayham@bayham.on.ca
NORFOLK COUNTY 50 Colborne Street South Simcoe, ON N3Y 4H3 *Creditor*	**Jason Burgess, Chief Administration Officer** jason.burgess@norfolkcounty.ca **Teresa Olsen, Clerk** teresa.olsen@norfolkcounty.ca
MUNICIPALITY OF CHATHAM-KENT 315 King Street W., P.O. Box 640 Chatham, ON N7M 5K8 *Creditor*	ck311@chatham-kent.ca
THE MUNICIPALITY OF DUTTON DUNWICH 199 Currie Road Dutton, ON N0L 1J0 *Creditor*	**Heather Bouw** hbouw@duttondunwich.on.ca
TOWNSHIP OF MALAHIDE 87 John Street S. Aylmer, ON N5H 2C3 *Creditor*	**Adam Betteridge, CAO** abetteridge@malahide.ca **Diana Wilson, Clerk** dwilson@malahide.ca

THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN 22413 Hoskins Line, Box 490 Rodney, ON N0L 2C0 *Creditor*	**Magda Badura, CAO/Treasurer** mbadura@westelgin.net **Jana Nethercott, Clerk** clerk@westelgin.net
TOWNSHIP OF ST.CLAIR 1155 Emily Street Mooretown, ON N0N 1M0 *Creditor*	**Jeff Baranek, Clerk** jbaranek@stclairtownship.ca **Charles Quenneville, Treasurer** cquenneville@twp.stclair.on.ca
MUNICIPALITY OF BLUEWATER 14 Mill Avenue, P.O. Box 250 Zurich, ON N0M 2T0 *Creditor*	info@municipalityofbluewater.ca
THE MUNICIPALITY OF CENTRAL HURON P.O. Box 400, 23 Albert Street Clinton, ON N0M 1L0 *Creditor*	**Steve Doherty, CAO** cao@centralhuron.com **Kerri Ann O'Rourke, Clerk** clerk@centralhuron.com
MUNICIPALITY OF HURON EAST 72 Main Street S., Box 610 Seaforth, ON N0K 1W0 *Creditor*	**Brad Knight, CAO/Clerk** bknight@huroneast.com
COUNTY OF ELGIN 450 Sunset Drive St. Thomas, ON N5R 5V1 *Party to a Road User Agreement*	**Steve Gibson, County Solicitor** sgibson@elgin.ca info@elgin.ca
DAWN-EUPHEMIA TOWNSHIP 4591 Lambton Line Dresden, ON N0P 1M0 *Creditor*	**Donna Clermont, Clerk** clerk@dawneuphemia.on.ca

MUNICIPALITY OF SOUTH HURON 322 Main Street S., P.O. Box 759 Exeter, ON N0M 1S6 *Creditor*	**Alex Wolfe, Deputy Clerk** awolfe@southhuron.ca
SOUTHWEST MIDDLESEX 153 McKellar Street Glencoe, ON N0L 1M0 *Party to a Road User Agreement*	
TOWNSHIP OF WARWICK R.R. #8 6332 Nauvoo Road Watford, ON N0M 2S0 *Creditor*	**Linda Shea, Deputy Treasurer/ Tax Collector** lshea@warwicktownship.ca
HAMILTON GEOLOGICAL SERVICES 35-375 Scott Street East Strathroy, ON N7G 4G7 *Party to a Gross Overriding Royalty Agreement*	
EUGENIE GAISWINKLER 307-64 Ursuline Avenue Chatham, ON N7L O8A *Party to a Gross Overriding Royalty Agreement*	
W. STEWART MCKEOUGH 337 Watercrest Lane Cedar Springs, ON N0P 1E0 *Party to a Gross Overriding Royalty Agreement*	donmckeough@gmail.com
METALORE RESOURCES LTD. 1467 Charlotteville Road 5 Simcoe, ON N3Y 4K1 *Party to a Gross Overriding Royalty Agreement*	

DELSALLE HOLDINGS LTD. 4085-2nd Avenue Burnaby, BC V5C 3X1 *Party to a Gross Overriding Royalty Agreement*	
DELL EXPLORATION c/o Flood & Company, Chartered Accountants 840 6th Avenue S.W., Suite 300 Calgary, AB T2P 3E5 *Party to a Gross Overriding Royalty Agreement*	
JAYA RESOURCES 2037 7th Avenue S.E. Calgary, AB T2G 0K2 *Party to a Gross Overriding Royalty Agreement*	(403) 266-5916
MCA RESOURCES LTD. 396-11th Avenue S.W., Suite 1320 Calgary, AB T2R 0C5 *Party to a Gross Overriding Royalty Agreement*	(403) 269-5416 cmhannon@chd.ca
BEJA HOLDINGS LIMITED 529 Erie Street S. Wheatley, ON N0P 2P0 *Party to a Gross Overriding Royalty Agreement*	taschia@icloud.com
ED WELYCHKA 7 Foxcrest Crescent London, ON N6K 3A3 *Party to a Gross Overriding Royalty Agreement*	edw@allenergyex.com
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NRG CORP. Unit 202, 920 Commissioners Road East London, ON N5Z 3J1 *Secured Party*	
344702 ONTARIO LIMITED PO Box 82 16 Johns Lane Tobermory, ON N0H 2R0 *Alleged Creditor*	**Bill Manderson** wmanderson@eastlink.ca
VAN BOEKEL HOG FARMS 344529 Ebenezer Rd RR #2 Mount Elgin, ON N0J 1N0 *Alleged Creditor*	**Eric Van Boekel** thehappyhoggers@execulink.com

EMAIL ADDRESS LIST

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Court File No. CV-21-00662483-00CL

ONTARIO
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Applicants

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Applicants

AFFIDAVIT OF EUGENIE GAISWINKLER (SWORN JULY 13, 2021)

I, Eugenie Gaiswinkler of the City of Chatham, in the Province of Ontario, MAKE OATH AND SAY:

1. I was married to Leo F. Gaiswinkler who is now deceased.

2. My husband, Leo F. Gaiswinkler was involved in the oil and gas industry in Ontario through his company Gaiswinkler Enterprises Limited.

3. My husband was involved in the drilling of numerous wells in Ontario through partnerships with various different individuals and corporations.

4. In his involvement in this industry, my husband came to own, through his business, Gaiswinkler Enterprises Limited (**"Company"**), various interests in land through Gross Overriding Royalty (**"GOR"**) Agreements.

5. Unfortunately, my husband has passed away, but the Company's interests in the GOR Agreements were assigned to my husband and I, as joint tenants. As the survivor, I am the sole owner of such interests.

6. Both my husband and I have earned significant remuneration from the GOR Agreements, and, for the last few years, I have continued to receive anywhere from $17,000 to $22,000 per year in royalty payments.

7. By my reading of the proposal presented by the Applicants in this matter, they are proposing that all of the royalty agreements be assigned to ResidualCo who would then go bankrupt. In effect, they are proposing to terminate all of the royalty agreements, yet allowing Clearbeach Resources Inc. (**"Clearbeach"**), through the purchaser, which is a related company, to continue to operate all of the wells free of any royalty obligations. Attached as **Exhibit "A"** is a Corporation Profile Report for the purchaser, Oil Patch Services Inc., which shows Jane E. Lowrie, James J. Crich, and Scott A. Lewis as directors. Attached as **Exhibit "B"** is a Corporation Profile Report for Clearbeach, which shows Jane E. Lowrie as the sole director.

8. To understand the extent of my interests in the royalty agreements attached as **Exhibit "C"** is a summary of the agreements relating to the Craven wells.

9. I am further attaching as **Exhibit "D"** an Excel spreadsheet outlining my interest in various wells and identifying their registration number under which all of the royalty agreements were registered. To my knowledge they are all registered on title, as against the respective lands.

10. By way of example, I am attaching the following documents:

(a) Attached as **Exhibit "E"** is a Document General dated June 14th, 1999 registered in the Municipality of Dutton-Dunwich for Assignment of an Royalty Agreement between Gaiswinkler Enterprises Limited and my father and mother, as joint tenants. Attached to this Document General is the actual Assignment which describes the interest being assigned as an interest in land.

(i) Attached as **Exhibit "F"** is a copy of instrument 140269, which is the Agreement assigned and referenced in this Document General. That instrument indicates that the GOR "shall constitute a charge upon the entire 100% working interest" held by the holding of the lease to which the GOR applies. That GOR was ultimately assigned to my husband and me.

(b) **Exhibit "G"** to this my Affidavit is a second Document General referencing an assignment of an royalty agreement registered in the Municipality of West Elgin. The assignment is between Gaiswinkler Enterprises Limited and my father and mother as joint tenants. The interest is described in para. 8 of the Document General and more specifically described in the Assignment of Oil and Gas Leases and Royalty in the attached agreement.

(i) Attached as **Exhibits "H"** through **"K"** are instruments 29903, 91780, 231598, and 232560 respectively, which are the grants and assignments referenced in this Document General. Instrument 29903 records that the landowners retained a 1/8th GOR, which was assigned by instrument 91780. That GOR was ultimately assigned to my parents. Instrument 231598 also records that the landowner retained a 1/8th GOR for substances other than

natural gas and a GOR of up to 1/8th for natural gas. Instrument 232560 records that that lessor under instrument 231598 was assigning its lease but retaining a GOR of 5%. That GOR was ultimately assigned to my husband and me.

(c) Attached as **Exhibit "L"** to this my affidavit is a third Document General registered on June 7th, 1989, registering an Assignment of Overriding Royalty Oil and Gas Leases in the Regional Municipality of Haldimand-Norfolk. The Assignment is from Gaiswinkler Enterprises Limited to my father and mother as joint tenants.

(i) Attached as **Exhibits "M"** to **"P"** are instruments 340717, 376289, 299287, and 429301 which are the four indentures referenced in this Document General. Those GORs were ultimately assigned to my husband and me.

11. In the affidavit filed by Jane Lowrie, she purports to suggest in para. 25 that the royalty agreements are in the nature of monetary interests and are not interests in real property. The documentation that I have provided, to my understanding, clearly confirm that the interests that I have in the royal agreements are interests in land.

12. Furthermore, Jane Lowrie in her affidavit at para. 26 suggests that the royal agreement held by Crich Holdings and Buildings Limited (**"Crich"**) is similar to all of the other royalty agreements and in my view that is incorrect. In the affidavit, Crich GOR apparently was granted as general and continuing security for obligations owed by Clearbeach to Crich. That is not the case in the royalty agreements in which I have an interest. Nor do I believe that the Crich GOR is in anyway similar to the vast majority of GORs granted.

13. To my knowledge, I have never agreed to postpone my interest under the royalty agreements to the interest of Pace Savings and Credit Union Limited (**"Pace"**) and to my knowledge, my interest under the royalty agreements pre-dates any relationship between Pace and Clearbeach.

14. It is my honest belief that Pace was aware of, or ought to have been aware of, the existence of the various GOR agreements when it initially placed its security with Clearbeach.

15. I am objecting to the proposed orders as outlined in this matter and as being promoted by the Applicants. The order is completely unfair to those who hold an interest under any GOR agreements. The proposal would result in all such persons, including myself, receiving nothing for our royalty agreements whereas the Applicants take over the Clearbeach business without the obligation of paying any royalties and with Pace's indebtedness being assigned to the new business operation resulting in Pace receiving payment of its indebtedness.

16. In this regard, I am advised by my solicitor that I am relying upon the Ontario Court of Appeal decisions in *Third Eye Capital Corporation v Ressources Dianor Inc*, 2019 ONCA 508 and *Third Eye Capital Corporation v Ressources Dianor Inc*, 2018 ONCA 253, the Supreme Court of Canada decision in *Bank of Montreal v Dynex Petroleum Ltd*, 2002 SCC 7, and the British Columbia Court of Appeal decision in *McDonald v Bode Estate*, 2018 BCCA 140, copies of which are attached and marked as **Exhibits "Q"** through **"T"**.

17. I make this affidavit in response to a Motion Record filed by the Applicants and for no other or improper purpose.

SWORN before me at the Municipality of Chatham, in the Municipality of Chatham-Kent on July 13, 2021

Commissioner for Taking Affidavits
(or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation
Expires March 16, 2024

EUGENIE GAISWINKLER

This is Exhibit "A" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
755819	OIL PATCH SERVICES INC.	1988/01/19

Jurisdiction
ONTARIO

Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE

Registered Office Address

JANE E. LOWRIE
185 MCEWAN STREET

BOTHWELL
ONTARIO
CANADA N0P 1C0

Mailing Address

JANE E. LOWRIE
185 MCEWAN STREET

BOTHWELL
ONTARIO
CANADA N0P 1C0

Date Amalgamated	Amalgamation Ind.
NOT APPLICABLE	NOT APPLICABLE

New Amal. Number	Notice Date
NOT APPLICABLE	NOT APPLICABLE

Letter Date
NOT APPLICABLE

Revival Date	Continuation Date
NOT APPLICABLE	NOT APPLICABLE

Transferred Out Date	Cancel/Inactive Date
NOT APPLICABLE	NOT APPLICABLE

EP Licence Eff.Date	EP Licence Term.Date
NOT APPLICABLE	NOT APPLICABLE

Number of Directors Minimum	Number of Directors Maximum	Date Commenced in Ontario	Date Ceased in Ontario
UNKNOWN	UNKNOWN	NOT APPLICABLE	NOT APPLICABLE

Activity Classification

NOT AVAILABLE

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
755819	OIL PATCH SERVICES INC.

Corporate Name History	Effective Date
OIL PATCH SERVICES INC.	2015/06/02
755819 ONTARIO LTD.	1988/01/19

Current Business Name(s) Exist: NO

Expired Business Name(s) Exist: NO

Administrator:

Name (Individual / Corporation)	Address
JAMES J. CRICH	500 RIDOUT STREET **Suite #** 2301 LONDON ONTARIO CANADA N6A 0A2

Date Began	First Director	
2015/04/27	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
DIRECTOR		Y

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
755819	OIL PATCH SERVICES INC.

Administrator:
Name (Individual / Corporation)

SCOTT
A
LEWIS

Address

114 BASELINE ROAD EAST

LONDON
ONTARIO
CANADA N6C 2N8

Date Began	First Director	
2015/05/05	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
OFFICER	PRESIDENT	

Administrator:
Name (Individual / Corporation)

SCOTT
A
LEWIS

Address

114 BASELINE ROAD EAST

LONDON
ONTARIO
CANADA N6C 2N8

Date Began	First Director	
2015/05/05	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
OFFICER	CHIEF EXECUTIVE OFFICER	

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
755819	OIL PATCH SERVICES INC.

Administrator:
Name (Individual / Corporation)

SCOTT
A
LEWIS

Address

114 BASELINE ROAD EAST

LONDON
ONTARIO
CANADA N6C 2N8

Date Began	First Director	
2015/05/05	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
DIRECTOR		Y

Administrator:
Name (Individual / Corporation)

JANE
E.
LOWRIE

Address

2807 WOODHULL ROAD

LONDON
ONTARIO
CANADA N6K 4S4

Date Began	First Director	
2004/09/30	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
DIRECTOR		Y

CORPORATION PROFILE REPORT

Ontario Corp Number

755819

Corporation Name

OIL PATCH SERVICES INC.

Administrator:
Name (Individual / Corporation)

JANE
E.
LOWRIE

Address

2807 WOODHULL ROAD

LONDON
ONTARIO
CANADA N6K 4S4

Date Began

2004/09/30

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

Administrator:
Name (Individual / Corporation)

JANE
E.
LOWRIE

Address

2807 WOODHULL ROAD

LONDON
ONTARIO
CANADA N6K 4S4

Date Began

2004/09/30

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

Y

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
755819	OIL PATCH SERVICES INC.

Last Document Recorded

Act/Code	Description	Form	Date
BCA	ARTICLES OF AMENDMENT	3	2015/06/02

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

This is Exhibit "B" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Amalgamation Date
5013470	CLEARBEACH RESOURCES INC.	2019/08/31

Jurisdiction

ONTARIO

Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE

Registered Office Address

2807 WOODHULL ROAD

LONDON
ONTARIO
CANADA N6K 4S4

Mailing Address

2807 WOODHULL ROAD

LONDON
ONTARIO
CANADA N6K 4S4

Date Amalgamated	Amalgamation Ind.
NOT APPLICABLE	A
New Amal. Number	**Notice Date**
NOT APPLICABLE	NOT APPLICABLE
	Letter Date
	NOT APPLICABLE
Revival Date	**Continuation Date**
NOT APPLICABLE	NOT APPLICABLE
Transferred Out Date	**Cancel/Inactive Date**
NOT APPLICABLE	NOT APPLICABLE
EP Licence Eff.Date	**EP Licence Term.Date**
NOT APPLICABLE	NOT APPLICABLE

Number of Directors Minimum	Number of Directors Maximum	Date Commenced in Ontario	Date Ceased in Ontario
00001	00010	NOT APPLICABLE	NOT APPLICABLE

Activity Classification

NOT AVAILABLE

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
5013470	CLEARBEACH RESOURCES INC.

Corporate Name History	Effective Date
CLEARBEACH RESOURCES INC.	2019/08/31

Current Business Name(s) Exist:	NO
Expired Business Name(s) Exist:	NO

Amalgamating Corporations

Corporation Name	Corporate Number
CLEARBEACH RESOURCES INC.	1748874
ON-ENERGY CORP.	5004913

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
5013470	CLEARBEACH RESOURCES INC.

Administrator:
Name (Individual / Corporation)

JANE
E
LOWRIE

Address

2807 WOODHULL ROAD

LONDON
ONTARIO
CANADA N6K 4S4

Date Began	First Director	
2019/08/31	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
DIRECTOR		Y

Administrator:
Name (Individual / Corporation)

JANE
E
LOWRIE

Address

2807 WOODHULL ROAD

LONDON
ONTARIO
CANADA N6K 4S4

Date Began	First Director	
2019/08/31	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
OFFICER	PRESIDENT	Y

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
5013470	CLEARBEACH RESOURCES INC.

Administrator:

Name (Individual / Corporation)	Address
JANE E LOWRIE	2807 WOODHULL ROAD LONDON ONTARIO CANADA N6K 4S4

Date Began	First Director	
2019/08/31	NOT APPLICABLE	
Designation	**Officer Type**	**Resident Canadian**
OFFICER	SECRETARY	Y

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
5013470	CLEARBEACH RESOURCES INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	INITIAL RETURN	1	2019/09/12 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

This is Exhibit "C" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

CRAVEN WELLS

MAY 17 2007

	WELL NAME		TWP. - TRACT - CONCESSION	LICENCE #	YEAR
1	Roberts-Sagadahoc No. 40	PR	Charlotteville 8-5-X	2545	1968
2	Beacon No. 1	PR	Charlotteville 2-8-IX	3300	1971
3	Beacon No. 2	PR	Charlotteville 8-6-X	3299	1971
4	Craven Beacon No. 3	PR	Charlotteville 8-11-X	3370	1972
5	Craven Beacon No. 5	PR	Charlotteville 5-10-IX	3383	1972
6	Craven Beacon No. 6	PR	Charlotteville 8-12-X	3390	1972
7	Craven Beacon No. 7	PR	Charlotteville 1-9-IX	3396	1972
8	Craven Beacon No. 8	PR	Charlotteville 8-11-IX	3520	1972
9	Craven 1	PR	Charlotteville 8-16-VIII	3699	1973
10	Craven 4	PR	Charlotteville 8-20-VIII	3742	1974
11	Craven 5	PR	Charlotteville 8-22-IX	3702	1974
12	Craven 6	PR	Charlotteville 6-23-IX	3704A	1974
13	Craven 7	PR	Charlotteville 4-23-VIII	3709	1974
14	Craven 8	PR	Charlotteville 5-22-VIII	3704A	1974
15	Craven 9	PR	Charlotteville 2-23-VII	3703	1974
16	Craven 10	PR	Charlotteville 4-21-VII	3754	1974
17	Craven 11	PR	Charlotteville 1-21-IX	3711	1974
18	Craven 12	PR	Charlotteville 7-22-VIII	3743	1974
19	CRaven 2	PR	Charlotteville 1-16-IX	3755	1974
20	CRaven-TAG 25	PR	N. Walsingham 2-8-XII	4607	1978
21	Craven Union 4	PR	Charlotteville 1-23-VI	4142	1976
22	Craven Union 6	PR	Windam 5-6-XIV	4144	1976
23	Craven Union 3	PR	Charlotteville 2-19-VII	4147	1976
24	Craven Union 8	PR	North Walsingham 6-13-VIII	4182	1976
25	Craven Union 12	PR	Charlotteville 6-1-III	4185	1976
26	CT 02	PR	Charlotteville 3-21-VIII	4511	1977
27	CT 03	PR	Charlotteville 3-16-IX	4512	1977
28	CT 04	PR	Charlotteville 1-20-IX	4515	1977
29	CT 05	PR	Charlotteville 8-22-VII	4517	1977
30	CT 06	PR	Charlotteville 5-17-VIII	4521	1977
31	Ct 07	PR	Charlotteville 3-22-IX	4523	1977
32	CT 08	PR	North Walsingham 8-12-VIII	4525	1977
33	CT 09	PR	North Walsingham 6-13-IX	4527	1977
34	CT 10	PR	North Walsingham 8-12-VII	4546	1977
35	CT11	PR	North Walsingham 6-10-VII	4558	1977
36	CT 13	PR	South Walsingham 3-13-VI	4568	1977
37	CT 15	PR	North Walsingham 7-7-VII	4587	1977
38	CT 16	PR	North Walsingham 7-9-IX	4588	1977
39	CT 17	PR	Charlotteville 4-22-VII	4591	1977
40	CT 19	PR	North Walsingham 6-13-X	4592	1977
41	CT 18	PR	Charlotteville 3-24-VI	4598	1977
42	Ct 22	PR	Charlotteville 2-21-VII	4599	1977
43	CT 21	PR	North Walsingham 6-14-X	4601	1977
44	CT 24	PR	North Walsingham 8-15-X A	4608	1977
45	CT 23	PR	North Walsingham 8-16-X	4609	1977
46	Craven - F-1	PR	Charlotteville 7-21-X	4613	1978
47	Craven - F-2	PR	North Walsingham 2-13-VII	4614	1978
48	Explorer # 1	PR	South Walsingham 3-3-II	5740	1981
49	Explorer # 5	PR	South Walsingham 1-4-II	5741	1981
50	GGOL # 33	PR	N. WALSINGHAM 7-12-IX		
51	GGOL # 34	PR	N. WALSINGHAM 2-8-VII		
52	GGOL # 35	PR	N. WALSINGHAM 3-7-VII		
53	GGOL # 38	PR	N. WALSINGHAM 8-12-X		
54	GGOL # 52	PR	N. WALSINGHAM 1-6-VII		
55	GGOL # 58	PR	N. WALSINGHAM 6-6-VII		

This is Exhibit "D" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

MNRF Lic#	Name	TWP	Lot	Con	Status	EG GORR (per MotionOfRecord-June-21)	Willey Cambrian Unit No.1	EG not listed in MotionOfRecor	EG GORR Reg'n No.
n/a	RR Unit (Clearbeach = Rodney Unit #3	Aldborough	various	Gore, VI, VII		Y		50% royalty	394018 (both Downie Royalty + GORR)
T001798	I.O.E (Gully)	Dunwich	23	3	OP	Y			394017 Willey
T002002	Imperial-Bluewater (Henderson)	Dunwich	22	2	OP	Y			394017 Willey
T002003	Imperial-Bluewater (Battery)	Dunwich	23	2	OP	Y			394017 Willey
T002545	Roberts & Sagadahoc No. 40	Charlotteville	5	X	GP	Y			539756 (Craven)
T002572	I.O.E. Atlas (South)	Dunwich	23	4	OP	Y			394017 Willey
T002594	I.O.E.L. Dunwich 1-24-Gore	Dunwich	24	Gore	OP	Y			394017 Willey
T003299	Beacon No. 2	Charlotteville	6	X	GP	Y			539756 (Craven)
T003300	Beacon No. 1	Charlotteville	8	IX	GP	Y			539756 (Craven)
T003370	Beacon No. 3	Charlotteville	11	X	GP	Y			539756 (Craven)
T003383	Beacon No. 5	Charlotteville	10	IX	GP	Y			539756 (Craven)
T003390	Beacon No. 6	Charlotteville	12	IX	GP	Y			539756 (Craven)
T003396	Beacon No. 7	Charlotteville	9	IX	GP	Y			539756 (Craven)
T003520	Beacon No. 8	Charlotteville	11	IX	GP	Y			539756 (Craven)
T003699	Craven #1	Charlotteville	16	VIII	GP	Y			539756 (Craven)
T003701A	Craven #8	Charlotteville	22	VII	GP	R		R	539756 (Craven)
T003703	Craven #9	Charlotteville	23	VII	GP	Y			539756 (Craven)
T003704	Craven #6	Charlotteville	23	IX	GP	Y			539756 (Craven)
T003709	Craven #7	Charlotteville	23	VIII	GP	Y			539756 (Craven)
T003711	Craven #11	Charlotteville	21	IX	GP	Y			539756 (Craven)
T003742	Craven #4	Charlotteville	20	VIII	GP	Y			539756 (Craven)
T003743	Craven #12	Charlotteville	22	VIII	GP	Y			539756 (Craven)
T003754	Craven #10	Charlotteville	21	VII	GP	Y			539756 (Craven)
T003755	Craven #2	Charlotteville	16	IX	GP	Y			539756 (Craven)
T004142	Craven Union 4	Charlotteville	23	VI	GP	Y			539756 (Craven)
T004144	Craven Union 6	Windham	6	XIV	GP	Y			539756 (Craven)
T004147	Craven Union 3	Charlotteville	19	VII	GP	Y			539756 (Craven)
T004182	Craven Union 8	North Walsingham	13	VIII	GP	Y			539756 (Craven)
T004185	Craven Union 12	Charlotteville	1	III	GP	Y			539756 (Craven)
T004511	Craven Tag #2	Charlotteville	21	VIII	GP	Y			539756 (Craven)
T004512	Craven Tag #3	Charlotteville	16	IX	GP	Y			539756 (Craven)
T004515	Craven Tag #4	Charlotteville	20	IX	GP	Y			539756 (Craven)
T004517	Craven Tag #5	Charlotteville	22	VII	GP	Y			539756 (Craven)
T004521	Craven Tag #6	Charlotteville	17	VIII	GP	Y			539756 (Craven)
T004523	Craven Tag #7	Charlotteville	22	IX	GP	Y			539756 (Craven)
T004525	Craven Tag #8	North Walsingham	12	VIII	GP	Y			539756 (Craven)
T004527	Craven Tag #9	North Walsingham	13	IX	GP	Y			539756 (Craven)
T004546	Craven Tag #10	North Walsingham	12	VII	GP	Y			539756 (Craven)
T004568	Craven Tag #13	South Walsingham	13	VI	GP	Y			539756 (Craven)
T004587	Craven Tag #15	North Walsingham	7	VII	GP	Y			539756 (Craven)
T004588	Craven Tag #16	North Walsingham	9	IX	GP	Y			539756 (Craven)
T004591	Craven Tag #17	Charlotteville	22	VII	GP	Y			539756 (Craven)
T004592	Craven Tag #19	North Walsingham	13	X	GP	Y			539756 (Craven)
T004598	Craven Tag #18	Charlotteville	24	VI	GP	Y			539756 (Craven)
T004599	Craven Tag #22	Charlotteville	21	VII	GP	Y			539756 (Craven)
T004601	Craven Tag #21	North Walsingham	14	X	GP	Y			539756 (Craven)
T004607	Craven Tag #25	North Walsingham	8	XII	GP	Y			539756 (Craven)
T004608	Craven Tag #24	North Walsingham	15	X	GP	Y			539756 (Craven)
T004609	Craven Tag #23	North Walsingham	16	X	GP	Y			539756 (Craven)
T004613	Craven F-1	Charlotteville	21	X	GP	Y			539756 (Craven)
T004614	Craven F-2	North Walsingham	13	VII	GP	Y			539756 (Craven)
T005740	Explorer #1	South Walsingham	3	II	GP	Y			539756 (Craven)
T005741	Explorer #5	South Walsingham	4	II	GP	Y			539756 (Craven)
T007684	Judo 6	Dunwich	23	BFA	OP	Y			394017 Willey
T009311	G. McColl No. 2	Aldborough	8	4-V	INJ	Y			394018 (Downie/McColl GORR)?
T009857	GGOL #33	North Walsingham	12	IX	GP	Y			539756 (Craven)?
T009860	GGOL #35	North Walsingham	7	VII	GP	Y			539756 (Craven)?
T009888	GGOL #38	North Walsingham	12	X	GP	Y			539756 (Craven)?
T010139	GGOL #58	North Walsingham	6	VII	GP	R		R	539756 Craven
T012032	Clearbeach et al #38	Dunwich	23	IV	OP	Y	Y		394017 Willey

This is Exhibit "E" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

Province of Ontario

Document General

Form 4 — Land Registration Reform Act, 1984

D

FOR OFFICE USE ONLY

E 394017

CERTIFICATE OF REGISTRATION
ELGIN (11) ST. THOMAS

'99 JUN 14 AM 11 42

LAND REGISTRAR

New Property Identifiers

Additional: See Schedule ☐

Executions

Additional: See Schedule ☐

(1) **Registry** ☒ **Land Titles** ☐ (2) Page 1 of 5 pages

(3) **Property Identifier(s)** Block Property Additional: See Schedule ☐

(4) **Nature of Document**

Assignment of Royalty Agreement

(5) **Consideration**

---------Two---------- Dollars $2.00

(6) **Description** Municipality of Dutton-Dunwich,(formerly Township of Dunwich),County of Elgin, being;

1) all Lot 20, Concession I and Part of Lot 21, Concession I;
2) South half of Lot 24, Con. I; and Road allowance between Lot 24, Con. 1 and Lot 24, Con. II;
3) South half of Lot 22, Concession I, South half of Lot 23, Concession I, North half of Lot 24, Concession II

DUNWICH WILLOW UNIT.

(7) **This Document Contains:** (a) Redescription New Easement Plan/Sketch ☐ (b) Schedule for: Description ☒ Additional Parties ☐ Other ☐

(8) **This Document provides as follows:**

The assignment of an undivided three percent (3%) gross overriding royalty, reserved to the Assignor in an Agreement dated January 1, 1970 and registered on April 7, 1970 in the Land Registry Division of Elgin (No. 11) as Instrument No. 140269, of the well head value of the crude oil, natural gas and related hydrocarbons produced and marketed from the lands covered by the leases described in Box "6" and more particularly described in Schedule "A" hereto.

Continued on Schedule ☐

(9) **This Document relates to instrument number(s)**

85168, 84787, 85480, 140269

(10) **Party(ies)** (Set out Status or Interest)

Name(s)	Signature(s)	Date of Signature Y	M	D
GAISWINKLER ENTERPRISES LIMITED	Andrew Gaiswinkler	1999	06	03
	Andrew Gaiswinkler, President			
	I have authority to bind the Corporation			
ASSIGNOR				

(11) **Address for Service** P. O. Box 367, Chatham, Ontario N7M 5K5

(12) **Party(ies)** (Set out Status or Interest)

Name(s)	Signature(s)	Date of Signature Y	M	D
GAISWINKLER, Leo F., as joint tenant	Leo F. Gaiswinkler	1999	06	03
GAISWINKLER, Eugenie, as joint tenant				
We are at least eighteen years of age and	Eugenie Gaiswinkler	1999	06	03
ASSIGNEES				

(13) **Address for Service** 22135 Wilson Drive, RR 3, Chatham, Ontario N7M 6J8

(14) **Municipal Address of Property**

Various

(15) **Document Prepared by:**

L. F. Gaiswinkler
R. R. 3
Chatham, Ontario
N7M 5J3

FOR OFFICE USE ONLY

Fees and Tax	
Registration Fee	
Total	

Newsome and Gilbert, Limited
Form LF1333 (1/85)

April, 1985

ASSIGNMENT OF OIL & GAS OVERRIDING ROYALTY

THIS AGREEMENT made as of this 1st day of June, 1999

B E T W E E N :

GAISWINKLER ENTERPRISES LIMITED
a Company incorporated under the laws of the Province of Ontario, having its head office in the Municipality of Chatham-Kent in the Province of Ontario,

Hereinafter called the "Assignor"

OF THE FIRST PART

- and -

LEO F. GAISWINKLER, Businessman,
and
EUGENIE GAISWINKLER, his spouse
both of the Municipality of Chatham-Kent, in the Province of Ontario,
as joint tenants and not tenants in common;

Hereinafter called the "Assignees"

OF THE SECOND PART

WITNESSETH as follows:

WHEREAS by indenture dated the 1st day of January 1970, and registered on the 7th day of April, 1970 in the Land Registry Division of Elgin (No. 11) as Instrument No. 140269, International Utilities Petroleum Corporation, assigned part of its interests in the form of a Gross Overriding Royalty to Quillian, Boychuk & Associates Limited; in certain Oil and Gas Leases and Grants more particularly described in Schedule "A" annexed to this agreement.

AND WHEREAS Quillian, Boychuk & Associates Limited changed its name to Gaiswinkler Enterprises Limited as evidenced by a Certificate of Amendment of Articles registered as No. 201233 in the Land Registry Division of Elgin (No. 11) on April 26, 1977.

AND WHEREAS Gaiswinkler Enterprises Limited has agreed to assign to Leo F. Gaiswinkler and Eugenie Gaiswinkler this certain gross overriding royalty on the wellhead value of the crude oil, natural gas and related hydrocarbons hereinafter referred to as "petroleum substances" produced from the lands covered by the said leases recited in Schedule "A" hereto.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other valuable consideration and the sum of Two Dollars (2.00) of lawful money of Canada, the Assignor does hereby grant, set over, assign and convey unto the Assignees the gross overriding royalty of three percent (3%) of the wellhead value of the petroleum substances produced, saved and marketed from the lands covered by the leases as set out in Schedule "A" hereto.

It is understood and agreed that the said 3% gross overriding royalty shall constitute a charge upon the entire 100% working interest held by the said leases set out in Schedule "A" hereto and shall be calculated upon the current market value of the petroleum substances so produced after deducting therefrom the cost of transporting the petroleum substances from the well site to the refinery but prior to deductions for marketing, operating or other expenses of any nature or kind.

So long as the said petroleum substances are produced the said gross overriding royalty shall become due and be paid in lawful money of Canada on or before the last day of each calendar month with respect to the value of the petroleum substances produced, saved and marketed during the previous calendar months, the lands covered by the said leases as set out in Schedule "A" hereto and as calculated in the manner hereinbefore set forth.

AND IT IS HEREBY declared and agreed that these presents and everything herein shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, heir, executors, administrators and legal representatives or person who succeeds or takes on the Parties' obligations.

IN WITNESS WHEREOF the parties hereto have caused their respective corporate seals to be affixed attested by the hands of their proper officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED
In the presence of:

Kandy L Osborne

Kandy L Osborne

) GAISWINKLER ENTEPRISES
) LIMITED
)
)
) Andrew Gaiswinkler
) Andrew Gaiswinkler-President
) I have authority to bind the Corporation
)
)
) Leo F. Gaiswinkler
) Leo F. Gaiswinkler, Joint Tenant
)
)
) Eugenie Gaiswinkler
) Eugenie Gaiswinkler, Joint Tenant

SCHEDULE "A" TO THE AGREEMENT MADE AS OF JUNE 1, 1999
BETWEEN GAISWINKLER ENTERPRISES LIMITED OF THE FIRST PART
AND LEO F. GAISWINKLER AND EUGENIE GAISWINKLER,
AS JOINT TENANTS OF THE SECOND PART:

Municipality of Dutton-Dunwich (formerly Township of Dunwich),
County of Elgin, Province of Ontario

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease No.
85168 on 6.11.61	24.5.61	Duncan S. McTavish	All Lot 20, Con. 1, Part Lot 21, Con. 1	239	17235
85487 on 23.11.61	25.5.61	Byron Murray Lillie Tooley Murray	South half Lot 24, Con. 1, Road allowance between Lot 24, Con. 1 and Lot 24, Con. 2	100	17224P
85480 on 23.11.61	26.5.61	Walter M. Gosnell Wilma Agnes Gosnell	South half Lot 22, Con. 1, South half Lot 23, Con. 1, North half Lot 24, Con. 2	300	17245

NOTES:

P – Partial Lease

"the lease" includes all leases above recited together with any renewals thereof.

Newsome and Gilbert
Form 1 58 (6/91)

Revised June, 1991

Affidavit of Residence and of Value of the Consideration

Form 1 – Land Transfer Tax Act

Refer to all instructions on reverse side.

PAGE 5

IN THE MATTER OF THE CONVEYANCE OF *(insert brief description of land)* Municipality of Dutton-Dunwich, (formerly Township of Dunwich) County of Elgin, Lot 20, Con. I and part of Lot 21, Con. I; S/2 Lot 24, Con. I and Road allowance between Lot 24, Con. I and Lot 24, Con. 2; S/2 Lots 22 and 23, Con. I and N/2 Lot 24, Con. 2.

BY *(print names of all transferors in full)* Gaiswinkler Enterprises Limited

TO *(see instruction 1 and print names of all transferees in full)* Leo F. Gaiswinkler and Eugenie Gaiswinkler

I, *(see instruction 2 and print name(s) in full)* Andrew Gaiswinkler

MAKE OATH AND SAY THAT:

1. I am *(place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent(s)): (see instruction 2)*

- ☐ (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- ☐ (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- ☐ (c) A transferee named in the above-described conveyance;
- ☐ (d) The authorized agent or solicitor acting in this transaction for *(insert name(s) of principal(s))* _____ described in paragraph(s) (a), (b), (c) above; *(strike out references to inapplicable paragraphs)*
- ☒ (e) The President, ~~Vice-President, Manager, Secretary, Director, or Treasurer~~ authorized to act for *(insert name(s) of corporation(s))* _____ described in paragraph(s) ~~(a)~~, ~~(b)~~, (c) above; *(strike out references to inapplicable paragraphs)*
- ☐ (f) A transferee described in paragraph( ) *(insert only one of paragraph (a), (b) or (c) above, as applicable)* and am making this affidavit on my own behalf and on behalf of *(insert name of spouse)* _____ who is my spouse described in paragraph ( ) *(insert only one of paragraph (a), (b) or (c) above, as applicable)* and as such, I have personal knowledge of the facts herein deposed to.

2. ***(To be completed where the value of the consideration for the conveyance exceeds $400,000).***

I have read and considered the definition of "single family residence" set out in clause 1(1)(ja) of the Act. The land conveyed in the above-described conveyance

- ☐ contains at least one and not more than two single family residences.
- ☐ does not contain a single family residence.
- ☐ contains more than two single family residences. *(see instruction 3)*

Note: **Clause 2(1)(d) imposes an additional tax at the rate of one-half of one per cent upon the value of consideration in excess of $400,000 where the conveyance contains at least one and not more than two single family residences.**

3. I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses 1(1)(f) and (g) of the Act and each of the following persons to whom or in trust for whom the land is being conveyed in the above-described conveyance is a "non-resident corporation" or a "non-resident person" as set out in the Act. *(see instructions 4 and 5)* N/A

4. **THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:**

(a) Monies paid or to be paid in cash	$ 2.00	
(b) Mortgages (i) Assumed *(show principal and interest to be credited against purchase price)*	$ NIL	
(ii) Given back to vendor	$ NIL	
(c) Property transferred in exchange *(detail below)*	$ NIL	
(d) Securities transferred to the value of *(detail below)*	$ NIL	
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	$ NIL	
(f) Other valuable consideration subject to land transfer tax *(detail below)*	$ NIL	
(g) VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX *(Total of (a) to (f))*	$ 2.00	$ 2.00
(h) VALUE OF ALL CHATTELS - items of tangible personal property *(Retail Sales Tax is payable on the value of all chattels unless exempt under the provisions of the "Retail Sales Tax Act", R.S.O. 1980, c.454, as amended)*		$ NIL
(i) Other consideration for transaction not included in (g) or (h) above		$ NIL
(j) TOTAL CONSIDERATION		$ 2.00

All Blanks Must Be Filled In. Insert "Nil" Where Applicable.

5. If consideration is nominal, describe relationship between transferor and transferee and state purpose of conveyance. *(see instruction 6)* N/A

6. If the consideration is nominal, is the land subject to any encumbrance? N/A

7. Other remarks and explanations, if necessary. The attached Instrument is an assignment of only an interest in the mineral rights to the lands and exemption from the Land Transfer Tax is claimed as provided under paragraph 3 of subsection 3(1) of Regulation 703 R.R.O. 1990.

Sworn before me at the Municipality of Chatham-Kent
in the Province of Ontario
this 3rd day of JUNE 19 99

A Commissioner for taking Affidavits, etc. LEO F. GAISWINKLER, a Commissioner, etc., Province of Ontario, for Gaiswinkler Enterprises Limited and Realoil Enterprises Limited. Expires December 7, 2000.

Andrew Gaiswinkler
signature(s)
Andrew Gaiswinkler

Property Information Record

A. Describe nature of instrument: Assignment of Oil and Gas Royalty

B. (i) Address of property being conveyed *(if available)* N/A

(ii) Assessment Roll No. *(if available)* N/A

C. Mailing address(es) for future Notices of Assessment under the Assessment Act for property being conveyed (see instruction 7) N/A

D. (i) Registration number for last conveyance of property being conveyed *(if available)*

(ii) Legal description of property conveyed: Same as in D.(i) above. Yes ☐ No ☐ Not known ☒

E. Name(s) and address(es) of each transferee's solicitor
N/A

For Land Registry Office Use Only

Registration No.

Registration Date | Land Registry Office No.

School Tax Support (Voluntary Election) See reverse for explanation

(a) Are all individual transferees Roman Catholic ? Yes ☐ No ☐

(b) If Yes, do all individual transferees wish to be Roman Catholic Separate School Supporters ? Yes ☐ No ☐

(c) Do all individual transferees have French Language Education Rights ? Yes ☐ No ☐

(d) If Yes, do all individual transferees wish to support the French Language School Board (where established)? Yes ☐ No ☐

NOTE: As to (c) and (d) the land being transferred will be assigned to the French Public School Board or Sector unless otherwise directed in (a) and (b).

0449D (90-09)

This is Exhibit "F" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

140268 - Unsworn

28
28A
29
33
33B
29B
29C
47A
D

DATED: January 1, 1970

UNRECORDED

I certify that the within instrument is registered in the Registry Office for the Registry Division of the County of Elgin

at 9:34 o'clock A.M.
of the 2nd day of
April A.D. 1970
Number 144269
Fee $10.50
Tax $
Deputy Registrar

9:34

INTERNATIONAL UTILITIES PETRO
CORPORATION

- and -

WILLIAM, BOYCHUK & ASSOCIATE
LIMITED

AGREEMENT

✓

AYERS & WOODS
41 E. Market Square
Chatham, Ontario

10.50 PD

THIS AGREEMENT MADE as of the 1st day of January 1970.

B E T W E E N :

INTERNATIONAL UTILITIES PETROLEUM CORPORATION, a body corporate, incorporated under the laws of the State of Delaware, one of the United States of America and registered to carry on business in the Province of Ontario,

Hereinafter called "International"

OF THE FIRST PART

- and -

QUILLIAN, BOYCHUK & ASSOCIATES LIMITED, a private company incorporated under the laws of the Province of Ontario and having its Head Office in the City of Chatham in the County of Kent,

Hereinafter called "Quillian"

OF THE SECOND PART

THE LAND TRANSFER TAX ACT
NO LAND TRANSFER TAX ON REGISTRATION OF THIS TRANSFER
CONTROLLER OF REVENUE
ONTARIO

WHEREAS International is the owner of a 100% working interest in certain oil and gas leases and grants more particularly described in Schedule "A" annexed to this agreement.

AND WHEREAS International has agreed to assign to Quillian a certain gross overriding royalty on the wellhead value of the crude oil, natural gas and related hydrocarbons hereinafter referred to as "petroleum substances" produced from the lands covered by the said leases.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of other valuable consideration and the sum of Two Dollars ($2.00) of lawful money of Canada International does hereby grant, set over, assign and convey unto Quillian a gross overriding royalty of 3% of the wellhead value of the petroleum substances produced, saved and marketed from the lands covered by the leases as set out in Schedule "A" hereto.

It is understood and agreed that the said 3% gross overriding royalty shall constitute a charge upon the entire 100% working interest held by International in the said leases set out in Schedule "A" hereto and shall be calculated upon the current market value of the petroleum substances so produced after deducting therefrom the cost of transporting the petroleum

TRANSFER TAX
21 21
ONTARIO
R. J. WALKER

substances from well site to refinery but prior to deductions for marketing, operating or other expenses of any nature or kind.

So long as the said petroleum substances are produced the said gross overriding royalty shall become due and be paid by International to Quillian in lawful money of Canada on or before the last day of each calendar month with respect to the value of the petroleum substances produced, saved and marketed from the lands covered by the said leases as set out in Schedule "A" hereto as calculated in the manner hereinbefore set forth, during the previous calendar month.

This agreement shall enure to and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals duly attested to under the hands of their proper signing officers duly authorized in that regard as of the day and year first above written.

TRANSFER TAX
21 21
ONTARIO
R. J. WALKER

INTERNATIONAL UTILITIES PETROLEUM CORPORATION

per _____
VICE PRESIDENT

per _____
PRESIDENT.

QUILLIAN, BOYCHUK & ASSOCIATES LIMITED

per _____
President

per _____
Vice-President

SCHEDULE "A" TO THE AGREEMENT MADE AS OF JANUARY 1, 1970
BETWEEN INTERNATIONAL UTILITIES PETROLEUM CORPORATION OF THE
FIRST PART AND QUILLIAN, BOYCHUK & ASSOCIATES LIMITED OF THE
SECOND PART

Township of Aldwich, County of Elgin

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease No
85168 on 6.11.61	24.5.61	Duncan S. McTavish	All Lot 20, Con. 1 Part Lot 21, Con. 1	23	17235
85487 on 23.11.61	25.5.61	Byron Murray Lillie Tooley Murray	South half Lot 24, Con.1 Road allowance between Lot 24, Con. 1 and Lot 24, Con. 2	100	17224P
85480 on 23.11.61	26.5.61	Walter M. Gosnell Wilma Agnes Gosnell	South half Lot 22, Con. 1 South half Lot 23, Con. 1 North half Lot 24, Con. 2 ex. pt.	300	17245

TRANSFER TAX
21 21
ONTARIO
R. J. WALKER

NOTES:

P - Partial Lease

"the lease" includes all leases above recited together with any renewals thereof.

This is Exhibit "G" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

Province of Ontario

Document General

Form 4 — Land Registration Reform Act, 1984

D

FOR OFFICE USE ONLY

394018

CERTIFICATE OF REGISTRATION
ELGIN (11) ST. THOMAS

'99 JUN 14 AM 11 43

LAND REGISTRAR

(1) Registry [X] Land Titles [ ] (2) Page 1 of 7 pages

(3) Property Identifier(s) Block Property Additional: See Schedule [ ]

(4) Nature of Document

Assignment of Royalty Agreement

(5) Consideration

------Two---------- Dollars $ 2.00

(6) Description Municipality of West Elgin, (formerly Township of Aldborough),County of Elgin and being Part of Lot 4, Concession 6; Part of Lot 5, Concession 6; all of Lots 1 and 2, Gore Concession; the North half of Lot 3, Concession 7; and the North half of Lot Lettered "D", Concession 7, all more particularly described in Schedule "A" attached hereto.

RR-UNIT

New Property Identifiers Additional: See Schedule [ ]

Executions Additional: See Schedule [ ]

(7) This Document Contains: (a) Redescription [ ] New Easement [ ] Plan/Sketch [ ] (b) Schedule for: Description [ ] Additional Parties [ ] Other [X]

(8) This Document provides as follows:

FIRSTLY: The assignment of an undivided one half (1/2) interest in, of and to the right, title and interest of the Assignor in and to the gross royalty reserved under the lease dated November 9, 1951, registered on November 6, 1952 as Instrument No. 29903 and the "Royalty Agreement" dated December 1, 1962 and registered on November 29, 1962 as Instrument No. 91780 all described in Schedule "A" hereto.

DOWNIE

SECONDLY: The assignment of an undivided five percent (5.0%) Gross Overriding Royalty reserved unto the Assignor in an Agreement dated February 25, 1980 and registered August 16, 1980, as Instrument No. 232560, of the value of the leased substances produced, saved and marketed, as defined in the Lease dated February 25, 1980 and registered June 18, 1980, as Instrument No. 231598,from the lands described in Schedule "A" hereto.

McColl.

See attached Assignment with Schedule "A"

Continued on Schedule [ ]

(9) This Document relates to instrument number(s)

29903, 91780, 108859, 116960, 117849, 177850, 183643, 184509, 335502, 373069

(10) Party(ies) (Set out Status or Interest)

Name(s)	Signature(s)	Date of Signature Y	M	D
GAISWINKLER ENTERPRISES LIMITED	Andrew Gaiswinkler Andrew Gaiswinkler, President I have authority to bind the Corporation	1999	06	03
ASSIGNOR				

(11) Address for Service P.O. Box 367, Chatham, Ontario N7M 5K5

(12) Party(ies) (Set out Status or Interest)

Name(s)	Signature(s)	Date of Signature Y	M	D
GAISWINKLER, Leo F.	Leo F. Gaiswinkler Leo F. Gaisiwnkler	1999	06	03
GAISWINKLER, Eugenie As Joint Tenants; We are at least eighteen years of age.	Eugenie Gaiswinkler Eugenie Gaiswinkler	1999	06	03
ASSIGNEES				

(13) Address for Service 22135 Wilson Drive, RR 3, Chatham, Ontario N7M 6J8

(14) Municipal Address of Property

Various

(15) Document Prepared by:

L. F. Gaiswinkler
R. R. 3
Chatham, Ontario
N7M 5J3

FOR OFFICE USE ONLY

Fees and Tax	
Registration Fee	
Total	

Newsome and Gilbert, Limited
Form LF1333 (1/85)

April, 1985

ASSIGNMENT OF OIL AND GAS LEASES AND ROYALTY

THIS AGREEMENT made as of this 1st day of June, 1999

BETWEEN: GAISWINKLER ENTERPRISES LIMITED,
a body corporate, authorized to carry on
business in the Province of Ontario
(hereinafter called the "Assignor")

OF THE FIRST PART

AND

Leo F. Gaiswinkler and Eugenie Gaiswinkler, his spouse;
Both of the Municipality of Chatham-Kent, in the Province of Ontario, as joint tenants and not tenants in common,
(hereinafter called the "Assignees")

OF THE SECOND PART

WHEREAS by an Oil and Gas Grant dated November 9, 1951, and registered in the Registry Office for the Registry Division of the County of Elgin on November 6, 1952, as Number 29903 for the Township of Aldborough, (hereinafter called the "Lease") William Frederick Downie and Mary L. Downie described therein as landowner, did grant to E.L. Roth of the City of Hillsdale in the State of Michigan, one of the United States of America, married woman, described therein as Operator, all of the oil and gas in and under the following lands and also all wells (other than water wells) then on the lands in the Township of Aldborough, in the County of Elgin and being composed of Lots 1 and 2 in the Gore Concession, in Concession VII, the southwest quarter of Lot 5, in Concession VI, and the southerly 35 acres of the south half of Lot 4, in Concession IV, except the westerly 30 feet thereof, (hereinafter called "the leased lands") together with the exclusive right to drill for, produce, store, treat, transport and remove by any method all oil and gas; and

WHEREAS the Lease reserved unto the landowner a gross royalty of one-eighth (1/8) of all oil produced and save from the leased lands; and

WHEREAS by an Agreement dated December 1, 1962, (Hereinafter called "the Royalty Agreement") and registered in the aforesaid Registry Office on November 29, 1962, as Instrument Number 91780, made between Mary Lucinda Downie, successors in title to the aforesaid landowner, as Assignors and Canadian Kewanee Limited and joined in by Marie Downie, the said Assignors assigned unto Canadian Kewanee Limited an undivided one-half (1/2) interest in, of and to the right, title and interest of the Assignors in and to the gross royalty reserved under the lease and an undivided one-half (1/2) interest in all of the oil, gas, coal and other minerals now at any time hereafter lying in or under the lands recited in Schedule "A" attached hereto and forming part of this agreement and further described as:

Township of Aldborough, County of Elgin, being Lots 1 and 2 in the Gore Concession, the North half of Lot 3 in Concession VII, the Southwest quarter of Lot 5, in Concession VI and the southerly 35 acres of the South half of Lot 4, in Concession VI, except the westerly 30 feet thereof, (hereinafter called "the Assigned lands"); and

WHEREAS by an Agreement made as of the first day of July, A.D. 1965, and registered in the Registry Office for the Registry Division of Elgin on September 1, 1965, as Instrument Number 108839, Canadian Kewanee Limited, did transfer, assign, set over and convey unto Triad Oil Co. Ltd., effective as of July 1, 1965, all of its right, title, estate and interest in and to the Lease and the Royalty agreement together with its entire interest thereunder in and to the Assigned lands and the oil and gas described

therein TO HAVE AND TO HOLD the same unto Triad Oil Co. Ltd. From and after July 1, 1965 for its sold use and benefit absolutely; and

WHEREAS by an Agreement made as of the first day of July, A.D., 1966, and registered in the Registry Office for the Registry Division of Elgin on December 5, 1966, as Instrument Number 116960, Triad Oil Co. Ltd., did transfer, assign, set over and convey unto Bow Valley Leasing Ltd., effective as of July 1, 1966, all of its right, title, estate and interest in and to the lease and the Royalty Agreement together with its entire interest thereunder in and to the Assigned lands and the oil and gas described therein TO HAVE AND TO HOLD the same unto Bow Valley Leasing Ltd. From and after July 1, 1966, for its sole use and benefit absolutely; and

WHEREAS by virtue of a certain Agreement made as of the 26th day of January, A.D., 1967, and registered in the Registry Office for the Registry Division of Elgin on January 31, 1967, as Instrument Number 117849 and 117850 Bow Valley Leasing Ltd. Agreed to assign unto Rayrock Mines Limited an undivided Forty (40%) per cent of its interest in and to the Lease and the Royalty Agreement together with its interest thereunder; and

WHEREAS by an Agreement made as of the 4th day of April, A.D. 1975, and registered in the Registry Office for the Registry Division of Elgin on May 23, 1973 as Instrument Numbers 183643 and 184509 Bow Valley Leasing Ltd. did transfer, assign, set over and convey unto Rayrock Mines Limited effective as of April 4, 1975, the remaining sixty (60%) of its right, title, estate and interest in and to the Lease and the Royalty Agreement together with its entire interest thereunder in and to the Assigned lands and the oil and gas described therein TO HAVE AND TO HOLD the same unto Rayrock from and after April 4, 1975 for its sole use and benefit absolutely; and

WHEREAS Rayrock Mines Limited changed its name by Articles of Amendment to Rayrock Resources Limited and Rayrock Resources Limited then changed its name to Rayrock Yellowknife Resources Inc. by Articles of Amendment registered as Instrument Number 335356 on June 5, 1992; and

WHEREAS the said Lease and "Royalty Agreement" were intended to be assigned in the Assignment of Leases between Rayrock Yellowknife Resources Inc. as Assignor and Gaiswinkler Enterprises Limited as Assignee, said Assignment being registered in the Registry Office for the Registry Division of Elgin on June 15, 1992, as Instrument Number 335507; and

WHEREAS the Leases described in Instrument Number 335509 were so assigned; and

WHEREAS the interest in the "Royalty Agreement" registered in the aforesaid Registry Office on November 29, 1962, as Instrument Number 91780 was not assigned through oversight; and

WHEREAS by an Agreement registered in the Registry Office for the Registry Division of Elgin on 24 January 1994 as Instrument Number 350279, Rayrock Yellowknife Resources Inc. as the Assignor, did transfer, assign, set over and convey to the Assignee, effective as of May 1, 1992, (hereinafter referred to as the "effective date") all its right, title, estate and interest in and to the "Royalty Agreement" together with the Assignor's entire right thereunder for the sole use and benefit of the Assignee, its successors and assigns, subject always to the terms and conditions contained in the said "Royalty Agreement" and to the performance and observance of the covenants, conditions and stipulations contained in the said "Royalty Agreement", said Royalty Agreement being registered in the Registry Office for the Registry Division of Elgin as Instrument Number 91780, on November 29, 1962, and

WHEREAS by an Agreement registered in the Registry Office for the Registry Division of Elgin on 17 September 1992 as Instrument Number 338073, Gaiswinkler did transfer, assign, set over, and convey unto Lakewood Energy Inc. all of its right, title, estate, and interest in and to the Lease, Excepting thereof the "Royalty Agreement" to the Assigned lands and the oil and gas described therein TO HAVE AND TO HOLD the same unto

Lakewood Energy Inc. from and after 17 September 1992 for its sole use and benefit absolutely; and

WHEREAS Lakewood Energy Inc., Serenpet Resources Inc., and Serenpet Exploration Inc. amalgamated effective 31 December 1994 under the name Serenpet Exploration Inc.; and

WHEREAS by Agreement dated 9 August 1994, Serenpet Exploration Inc. transferred and conveyed effective 1 August 1994, its entire interest to Serenpet Partnership ("Serenpet"); and

WHEREAS by Agreement made as of 1 July,1996 between Serenpet Exploration Inc. and Shiningbank Energy Limited, and registered in the Registry Office for the Registry Division of Elgin, Ontario on 31 October, 1996 as Instrument Number 373069, Serenpet did transfer, assign, set over, and convey unto Shiningbank all of its right, title, estate, and interest in and to the Lease together with its entire interest thereunder in and to the Assigned lands and the oil and gas described therein TO HAVE AND TO HOLD the same unto Shiningbank from and after the effective date for its sole use and benefit absolutely; excepting the "ROYALTY AGREEMENT" reserved exclusively unto Gaiswinkler Enterprises Limited under the terms of the Purchase and Sales Agreement between Gaiswinkler Enterprises Limited and Lakewood Energy Inc. and being registered in the Registry Office for the Registry Division of Elgin, Ontario, as Instrument Number 91780, on November 29, 1962 and further registered on 24 January, 1994 as Instrument Number 350279 in the Registry Office for the Registry Division of Elgin, Ontario.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual covenants and agreements by and between the parties hereto:

1. The Assignor hereby transfers, sets over and conveys to the Assignees, effective as of June 1, 1999, (hereinafter referred to as the "effective date") all its right, title, estate and interest in and to the "Royalty Agreement" together with the Assignor's entire right thereunder for the sole use and benefit of the Assignee, their successors and assigns, subject always to the terms and conditions contained in the said "Royalty Agreement" and to the performance and observance of the covenants, conditions and stipulations contained in the said "Royalty Agreement", said "Royalty Agreement" being registered in the Registry Office for the Registry Division of Elgin as Instrument Number 91780 on November 29, 1962.

2. The Assignor hereby transfers, sets over and conveys to the Assignees effective as of June 1, 1999, (herein referred to as the "effective date") all its rights, title, estate and interest in and to the Agreement dated February 25, 1980, (hereinafter called the "Gross Overriding Royalty Agreement) and registered in the Registry Office for the Registry Division of Elgin, Ontario on August 6, 1980, as Instrument No. 232560 made between Realoil Enterprises Limited, an associate of Gaiswinkler Enterprises Limited as the Assignor and Rayrock Resources Limited on the Assignee, wherein the Assignor reserved unto itself an undivided Five Percent (5.0%) Gross Overriding Royalty of the Gross Wellhead Value, before any deductions for trucking or other operating expenses, from the production of the Well, J. McColl No. 2, 1-1-D-7 Aldborough, located on the lands recitated in Schedul e"A" attached hereto and forming part of this agreement and described as: Township of Aldborough, County of Elgin, being the north half of Lot lettered "D", in Concession VII.

AND IT IS HEREBY declared and agreed that these presents and everything herein shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, heir, executors, administrators and legal representatives or person who succeeds or takes on the Parties' obligations.

IN WITNESS WHEREOF the parties hereto have caused their respective corporate seals to be affixed attested by the hands of their proper officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED
In the presence of:

Kandy L Osborne

Kandy L Osborne

) GAISWINKLER ENTERPRISES
) LIMITED
)
)
) Andrew Gaiswinkler
) Andrew Gaiswinkler-President
) I have authority to bind the Corporation
)
) Leo F. Gaiswinkler
) Leo F. Gaiswinkler, Joint Tenant
)
) Eugenie Gaiswinkler
) Eugenie Gaiswinkler, Joint Tenant

SCHEDULE "A" REFERRED TO IN THAT CERTAIN ASSIGNMENT DATED
THE 1ST DAY OF JUNE, A.D. 1999 BETWEEN GAISWINKLER ENTERPRISES LIMITED
AND LEO F. GAISWINKLER AND EUGENIE GAISWINKLER, AS JOINT TENANTS.

OIL AND GAS LEASES IN THE MUNICIPALITY OF WEST ELGIN, (FORMERLY TOWNSHIP OF ALDBOROUGH)
COUNTY OF ELGIN, PROVINCE OF ONTARIO

	LEASE DATE Y-M-D	REGISTRATION DATE Y-M-D	INSTRUMENT NO.	LESSOR	ACREAGE	DESCRIPTION
Lease	1951-11-09	1952-11-06	29903	William Frederick Downie and Mary L. Downie	369.60	Lots 1 and 2 in the Gore Concession, N/2 Lot 3, Concession VII, SW/4 Lot 5, Concession VI and Part Lot 4, Concession VI (35 acres);
Agreement	1962-12-01	1962-11-29	91780	Mary Lucinda Downie, William Waren Downie and Marie Downie		Assignment of One-Half Interest in Gross Royalty to Lessee and its Assigns etc., for their use forever.
Agreement	1964-04-30	1964-11-25	103731	William W. Downie and Marie M. Downie	1.1207	Part of Lots 1 and 2, Gore Concession (Surface Lease)
Agreement	1962-10-5,6,8,11,19	1962-11-01	Deposit #6566	Unit Agreement – R & R Unit	748.70	Incl. Leases described above.
Lease	1980-02-25	1980-06-18	231598	John E. McColl and Susie McColl	100.00	N/2 Lot "D", Concession VII; subject to an easement in favour of the Hydro-Electric Power Commission of Ontario registered 28 July 1949 as Instrument No. 28585.
Agreement	1980-02-25	1980-08-06	232560	Rayrock Resources Limited		Assignment of a Five Percent (5.0%) Gross Overriding Royalty of the Wellhead Value from the production of J. McColl No. 2 Well. (incl. all of Lot "D" Conc. VII)

This is Exhibit "H" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

PROVINCE OF ONTARIO
County of Lambton
in the County of Hillsdale,

I, ELMER ALBERT ROTH of the City of Hillsdale in the State of Michigan, Oil Operator,

make oath and say, to wit:

1. That I was personally present and did see the within instrument, duly signed, sealed and executed by William Frederick Downie, Mary L. Downie and E. L. Roth, three in number, of the part ies hereto.

2. That the said instrument was executed by the said parties at the Township of Aldborough in the County of Elgin.

3. That I know the said parties and am a subscribing witness to the said instrument.

SWORN before me at the Town of Petrolia in the County of Lambton this 14th day of November A.D. 1951.

Elmer A. Roth

A Commissioner, etc.

OIL AND GAS GRANT

FROM
WILLIAM FREDERICK DOWNIE et ux.

TO
E. L. ROTH,
114 Hillsdale St.,
HILLSDALE, Mich.

Dated
Term
Location

Lot 3 Con 9 #3 Petrolia, Ont

I certify and record this instrument
is duly entered and recorded in the
Registry Office for the Registry
Division of the County of Elgin
Book 51 for the Township
of Aldborough
at 2:15 o'clock P.M. on the 16th
day of December A.D. 1952
Number 22903
Bernice Cooper
Registrar

Tax $3.00

Filed.

22903 — Aldborough

1147
1465
1568

THIS GRANT made between William Frederick Downie and Mary L. Downie, his wife.

Address Rodney Ont R#4 and each signing for and in respect to his or her own interest and hereinafter called "Land Owner" of the first part, and ~~ELMER L. ROTH, 635 Book~~ E.L. Roth 114 Hillsdale ST- Hillsdale Mich ~~Building, Detroit~~, Michigan, hereinafter called "operator" of the second part.

WITNESSETH: That land owner, for and in consideration of the agreements herein on the part of the operator does hereby grant to operator all the oil and gas in and under the following lands and also all wells (other than water wells) now on said land, in the Township of Aldborough in the County of Elgin in Province of Ontario Registered

Lot one in Gore Concession (100 acres) (27200)
Lot two in Gore Concession (100 acres)
North ½ Lot 3 in Concession VII (100 acres)
SW¼ Lot 5 in Concession VII (50 acres) (27887)
Southerly 35 acres of S½ of Lot 4 in Con VII (35 acres) (27887)
Exc West 30ft.

more fully described in registered Instrument No. ..... for said Township, containing 385 acres more or less.

Land owner covenants that deed of said land is in his name and that if above description be incorrect in the opinion of operator land owner hereby authorizes operator or his agent to correct the description so as to carry out the intent of this grant which is to include all lands owned by land owner, in above mentioned township.

Land owner grants to operator the exclusive right to drill for, produce, store, treat, transport, and remove by any method all oil and gas found in or under said land, also the right to lay, operate and repair pipe lines for transporting the products of said land or other lands, also the right to possession and use of as much land including rights-of-way as may be necessary to conduct all operations hereunder. Also the right to remove any and all material, building, pipe or machinery placed in or on said lands both during the continuance or after the termination of this grant. Operator agrees to leave gates and fences as found and bury pipe lines below plow depth if requested and pay taxes assessed against property operator places on said land, and not to drill within two hundred feet of house, barn, or in orchard if land owner objects, unless operator shall indemnify land owner in a reasonable manner against damage and to pay damages done to growing crops in case bill is received within six months.

Operator shall deliver to land owner free of all costs in tanks or pipe lines on the premises or pay land owner for the one-eighth of all oil produced and saved from said lands and also pay the following rates per year for each gas well from which the gas is being marketed: all to be based upon a guage to be taken yearly after blowing eight hours.

Lessor hereby agrees and directs the Lessee to ship all the oil received from the said property, to collect the proceeds of the oil from the party to whom the said oil is shipped; he further directs the Lessee to deduct the transportation charges and to accept from the Lessee one-eight of the said proceeds of oil as his share. The said Lesee agrees to pay the net proceeds as above set out to the Lessor on or before the 15th day of the following month for all oil so sold from the hereinbefore described property during the previous month, and if demanded by the purchaser of the oil or gas produced, the Lessor agrees to prove his title to the above described lands to the satisfaction of the purchaser.

For wells making up to five hundred thousand cubic feet per day, fifty dollars; and from five hundred thousand to one million cubic feet per day, one hundred dollars; from one million to three million cubic feet per day, two hundred dollars; over three million cubic feet per day, three hundred dollars.

Provided, and it is a condition of this grant that (subject in any event to the two notices to be given by land owner as hereinafter mentioned) it shall become null and void and not binding on either party if the operator does not commence operations to drill a well within one year from the date hereof, unless operator shall pay to land owner at the rate of ~~twenty~~ five cents per acre annually thereafter until operations are commenced.

Operator may at any time release to land owner or assign to any one all or part of his interest in the whole or part of the land hereby granted and shall be released from further liability in respect of that part of said lands or interest therein so released or assigned.

Operator shall have the right at any time to redeem for land owner by payment any mortgage, taxes or other liens on said lands in the event of default in payment by land owner and be subrogated to the rights of the holder thereof and shall be entitled to a lien on said land for any paymetns so made.

In case there are more than one land owner at any time, the payments herein mentioned shall be apportioned as between the land owners according to their respective shares or interests, and if there are more than five land owners then operator may, in like manner, charge and apportion cost of accounting and paying plus thirty per cent.

Failure on the part of operator to comply with any of the conditions or pay any of the cash considerations or said annual payments herein mentioned when due or payable will render this grant void and not binding on either party, provided land owner gives ninety days' notice to operator by registered letter addressed to operator's last known post office address pointing out the default or failure to make any of said payments so it can be removed. And in case the default is not removed or payment made when the same had become payable within such ninety days then at the expiration thereof land owner may give operator another or second notice, by registered letter declaring this grant void, after which this grant shall automatically become null and void and the rights and interests granted herein shall revert to the land owner and neither party shall have any right of privilege to reinstate or revive the same or to invoke the aid of any provision, covenant or agreement contained herein or to bring any action thereon. Any money due to land owner may be deposited in the ~~Bank~~

A test well shall be started on above properties within six months or operator shall start paying rental at rate of one dollar per acre per year.

Notwithstanding anything hereinbefore contained it is hereby provided that this grant is subject to the conditions that in case oil or gas in paying quantities is or are not produced or in case drilling operations are not being carried on at the expiration of twenty years from the date hereof, or in case such production or drilling operations cease (not including cessation from lack or weakness of market or from other uncontrollable cause or reasonable temporary cesstion on the part of operator), after said twenty years at any time after land owner shall have given notices as aforesaid then this Grant shall be determined and the rights and interest granted herein shall revert to and be the property of land owner.

All covenants and conditions and provisoes herein shall extend to and be binding upon the respective heirs, executors, administrators, successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF this 9th day of November A.D. 1951

WITNESS:

Elmer A. Roth.

William Frederick Downie
Mary L. Downie
E.L. Roth

Affidavit Land Transfer Tax Act

3

Registry Office, County of Lambton

In the Matter of the Land Transfer Tax Act, 1921 and 1922

Province of Ontario
COUNTY OF LAMBTON
To Wit:

I, E. L. ROTH - - - of the City of Hillsdale in the County of Lambton ~~XXXXX~~ Hillsdale, State of Michigan, ~~XX~~ for the Lessee - - - - named in the within (or annexed) transfer make oath and say:

This affidavit may be made by the purchaser or vendor or by any one acting for them under power of attorney or by an agent accredited in writing by the purchaser or vendor or by the solicitor of either of them.

1. I am the Lessee - - - - named in the within (or annexed) transfer.

2. I have a personal knowledge of the facts stated in this affidavit.

3. The true amount of the monies in cash and the value of any property or security included in the consideration is as follows:

(a) Monies paid in cash ..... $ 250.00

(b) Property transferred in exchange to the equity value of ..... $ nil

(c) Securities transferred to the value of ..... $ nil

(d) Balance of existing encumbrances with interest owing at date of transfer ..... $ nil

Set out liens and encumbrances in detail.

(e) Monies secured by mortgage under this transaction ..... $ nil

(f) Liens, Legacies, annuities and maintenance charges to which transfer is subject ..... $ nil

Total consideration ..... $ ~~250.00~~

Complete each line, leave no blanks, that is essential.

4. If consideration is nominal, is the transfer for natural love and affection? .....

5. If so, what is the relationship between Grantor and Grantee? .....

6. Other remarks and explanations, if necessary The terms of the attached instrument are such that the exact consideration is difficult to establish and for this reason the Controller of Revenue has set and arbitrary taxable consideration of $250.00

Sworn before me at the Town of Petrolia in the County of Lambton this 14th - - day of November - - - in the year of our Lord 1951.

E. L. Roth,

H. R. Fietcher

A Commissioner, etc.

This is Exhibit "I" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

91780 - Aldborough Filed

9

DATED December 1st 1962

148
149
130 ft.
128
E.

BETWEEN:

MARY LUCINDA DOWNIE
and WILLIAM WARREN DOWNIE
and MARIE DOWNIE

and

CANADIAN KEWANEE LIMITED

I certify that the within instrument is duly entered and registered in the Registry Office for the Registry Division of the County of Elgin and recorded on Microfilm for the Township of Aldborough at 11:40 o'clock AM of the 29th day of November A.D. 1962. Number 91780
Fee $ 7.50
Tax $ 115.00
R. W. Evans
Registrar

11.40

THE PROPERTY OF THE REGISTRY OFFICE AT ST. THOMAS, ONTARIO

IVEY, LIVERMORE & DOWLER
Barristers & Solicitors
820 Northern Life Bldg.,
291 Dundas Street
London, Ontario.

$ 7.50 + $ 115.00

THIS INDENTURE MADE this 1st day of December, 1962

BETWEEN:

MARY LUCINDA DOWNIE, of the Township of Aldborough, in the County of Elgin, Widow, and WILLIAM WARREN DOWNIE, of the said Township, Farmer, (hereinafter called the "Assignors")

OF THE FIRST PART

and

CANADIAN KEWANEE LIMITED, a company incorporated under the laws of the State of Delaware, one of the United States of America (hereinafter called "Kewanee")

OF THE SECOND PART

and

MARIE DOWNIE, of the said Township of Aldborough, wife of the said William Warren Downie

OF THE THIRD PART

WHEREAS by an oil and gas grant dated November 9, 1951 and registered in the Registry Office for the Registry Division of the County of Elgin on November 6, 1952 as Number 29903 for the Township of Aldborough, William Frederick Downie and Mary L. Downie described therein as Land Owner, did grant to E.L. Roth of the City of Hillsdale in the State of Michigan, one of the United States of America, Married Woman, described therein as Operator, all the oil and gas in and under the following lands and also all wells (other than water wells) then on said lands in the Township of Aldborough, in the County of Elgin and being composed of Lots 1 and 2 in the Gore Concession, the north half of Lot 3, in Concession VII, the southwest quarter of Lot 5 in Concession VI, and the southerly 35 acres of the south half of Lot 4 in Concession VI, except the westerly 30 feet thereof, together with the exclusive right to drill for, produce, store, treat, transport and remove by any method all oil and gas

found in or under the said land, together with certain other rights more particularly therein described, subject however to the covenants therein contained, including the following covenants:

"Operator shall deliver to land owner free of all costs in tanks or pipe lines on the premises or pay land owner for the one-eighth of all oil produced and saved from said lands and also pay the following rates per year for each gas well from which the gas is being marketed: all to be based upon a guage to be taken yearly after blowing eight hours.

Lessor hereby agrees and directs the Lessee to ship all the oil received from the said property, to collect the proceeds of the oil from the party to whom the said oil is shipped; he further directs the Lessee to deduct the transportation charges and to accept from the Lessee one-eighth of the said proceeds of oil as his share. The said Lessee agrees to pay the net proceeds as above set out to the Lessor on or before the 15th day of the following month for all oil so sold from the hereinbefore described property during the previous month, and if demanded by the purchaser of the oil or gas produced, the Lessor agrees to prove his title to the above described lands to the satisfaction of the purchaser.

For wells making up to five hundred thousand cubic feet per day, fifty dollars; and from five hundred thousand to one million cubic feet per day, one hundred dollars; from one million to three million cubic feet per day, two hundred dollars; over three million cubic feet per day, three hundred dollars."

AND WHEREAS the said William Frederick Downie died on or about January 2, 1957 having made his last Will and Testament dated February 16, 1956, probate whereof was granted on May 6, 1957 to Mary Lucinda Downie, William Warren Downie and The Canada Trust Company, the

executors named in the said Will, and directed his executors in the said Will to transfer and convey the said Lots 1 and 2 in the Gore Concession to his son William Warren Downie subject to the life use and enjoyment of his said wife Mary Lucinda Downie to the intent that such use would include income only from the oil and mineral rights, and that his said son would be entitled to all income other than income derived from oil and mineral rights;

AND WHEREAS the said Mary L. Downie and the said Mary Lucinda Downie are one and the same person;

AND WHEREAS by deed dated June 1, 1959 and registered in the Registry Office for the Registry Division of the County of Elgin on July 16, 1959 as Number 32887 for the Township of Aldborough, the said Mary Lucinda Downie, William Warren Downie and The Canada Trust Company as executors of the estate of the said William Frederick Downie, conveyed the said Lots 1 and 2 in the Gore Concession to William Warren Downie subject to the life use of the oil and mineral rights in favour of Mary Lucinda Downie as provided in the said Will;

AND WHEREAS by deed dated April 1, 1959 and registered in the Registry Office for the Registry Division of the County of Elgin on June 24, 1959 as Number 32856 for the Township of Aldborough, the said Mary Lucinda Downie, William Warren Downie and The Canada Trust Company as executors of the estate of the said William Frederick Downie, conveyed the north half of Lot 3, in Concession VII, in the Township of Aldborough to Louis Bartha and Therezia Bartha, his wife, as joint tenants;

AND WHEREAS by virtue of various assignments Kewanee is now the owner of the said oil and gas grant subject to having assigned to Canada-Cities Service Petroleum Corporation all its right, title and interest in a portion of the lands therein described, the oil and gas comprised therein and all benefit and advantage to be

derived therefrom as provided for in the said oil and gas grant;

AND WHEREAS the Assignors have agreed to sell to Kewanee an undivided one-half interest in the gross royalty reserved by Land Owner in the said oil and gas grant, and, subject to the said oil and gas grant, to convey an undivided one-half interest in all of the oil, gas, coal and other minerals, now or at any time hereafter lying in or under the lands and premises hereinafter described;

NOW THIS INDENTURE WITNESSETH THAT in consideration of the sum of $57,500.00 now paid by Kewanee to the Assignors, the receipt whereof is hereby acknowledged, the Assignors do grant and assign unto Kewanee, its successors and assigns, an undivided one-half interest in all of the right, title and interest of the Assignors in and to the gross royalty reserved by Land Owner in the said oil and gas grant and do grant and assign unto Kewanee, its successors and assigns, subject to the said oil and gas grant, an undivided one-half interest in all of the oil, gas, coal and other minerals now or at any time hereafter lying in or under the lands and premises (or any part thereof) situate in the Township of Aldborough, in the County of Elgin, described as follows:

Lots 1 and 2 in the Gore Concession, the southwest quarter of Lot 5 in Concession VI, and the southerly 35 acres of the south half of Lot 4, in Concession VI, except the westerly 30 feet thereof.

And also the perpetual and irrevocable right, privilege and easement of entering upon said lands and searching for, drilling wells, sinking shafts, mining, digging, extracting, taking and carrying away all of the oil, gas, coal and other minerals in or under said lands, or that may be found therein or thereunder, and also the right to possession and use of so much of said premises

at all times as may be necessary to the practical carrying out of the purposes and provisions of these presents.

To have and to hold the same unto Kewanee, its successors and assigns, to and for its and their sole and only use forever.

And the Assignors hereby covenant with Kewanee that notwithstanding any act of the Assignors they now have in themselves good right, full power and absolute authority to grant and assign the rights, titles, privileges and easements in the manner aforesaid according to the true intent and meaning of these presents.

And that the Assignors shall and will from time to time and at all times hereafter at the request and cost of Kewanee, do and perform all such acts and things and execute all such deeds, documents and writings and give all such further assurances as Kewanee shall reasonably require.

And it is hereby declared and agreed that this indenture shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the Assignors and the Party of the Third Part have set their hands and seal as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
in the presence of

Ellen Dunkley

Mary Lucinda Downie
Mary Lucinda Downie

William Warren Downie
William Warren Downie

Marie Downie
Marie Downie

PROVINCE OF ONTARIO)
COUNTY OF Kent)
TO WIT:)

I, MARY LUCINDA DOWNIE, of the Township of Aldborough in the County of Elgin, Widow,

one of the Assignors in the within instrument named, make oath and say that at the time of the execution of the within instrument I was of the full age of twenty-one years.

SWORN before me at the Town of Ridgetown in the County of Kent this 28th day of November, 1962.

Mary Lucinda Downie.

A Commissioner, etc.

PROVINCE OF ONTARIO)
COUNTY OF ~~ELGIN~~ Kent)
TO WIT:)

I, WILLIAM WARREN DOWNIE of the Township of Aldborough in the County of Elgin, Farmer,

one of the Assignors in the within instrument named, make oath and say that at the time of the execution of the within instrument;

1. I was of the full age of twenty-one years;

2. And that Marie Downie who also executed the within instrument was of the full age of twenty-one years;

3. I was legally married to the person named therein as my wife.

SWORN before me at the Town of Ridgetown in the County of Kent this 28th day of November 19 62

William W. Downie

A Commissioner, etc.

AFFIDAVIT UNDER LANDS TRANSFER TAX ACT

In the Matter of The Land Transfer Tax Act

PROVINCE OF ONTARIO)
of)
County of Elgin)

I, Mary Lucinda Downie
of the Township of Aldborough
in the County of Elgin
make oath and say:

1. I am one of the Assignors named in the within (or annexed) transfer.

2. I have a personal knowledge of the facts stated in this affidavit.

3. The true amount of the monies in cash and the value of any property or security included in the consideration is as follows:

(a)	Monies paid in cash	$ 57,500.00
(b)	Property transferred in exchange:	
	Equity value $	$ Nil
	Encumbrances	$ Nil
(c)	Securities transferred to the value of	$ Nil
(d)	Balances of existing encumbrances with interest owing at date of transfer	$ Nil
(e)	Monies secured by mortgage under this transaction	$ Nil
(f)	Liens, annuities and maintenance charges to which transfer is subject	$ Nil
	Total consideration	$ 57,500.00

SWORN before me at the)
of City of St. Thomas)
in the County of Elgin)
of)
this 29th day of November)
1962.)

Mary Lucinda Downie

A Commissioner, etc.

PROVINCE OF ONTARIO)
COUNTY OF ~~ELGIN~~ Kent)
To WIT:)

I, Ellen Dunkley
of the Town of Ridgetown
in the County of Kent
Stehographer, make oath and say:

1. THAT I was personally present and did see the within or annexed Instrument and a duplicate thereof duly signed, sealed and executed by Mary Lucinda Downie, William Warren Downie and Marie Downie three of the parties thereto.

2. THAT the said Instrument and duplicate were executed by the said parties at the Town of Ridgetown

3. THAT I know the said parties.

4. THAT I am a subscribing witness to the said Instrument and duplicate.

SWORN before me at the Town)
of Ridgetown in the County)
of Kent this 28th)
day of November A.D. 1962.)

Ellen Dunkley

A Commissioner, etc.

AFFIDAVIT, THE REGISTRY ACT

IN THE MATTER OF THE MORTMAIN AND CHARITABLE USES ACT

PROVINCE OF ONTARIO)
COUNTY OF Elgin)
TO WIT:)

I, Richard M. Dorey of the City of London in the County of Middlesex make oath and say:

1. That I am Solicitor of the Canadian Kewanee Limited, the assignee named in the annexed instrument, and as such have knowledge of the matters herein deposed to.

2. That the lands described in the annexed instrument are not assured to Canadian Kewanee Limited contrary to the provisions of Section 2 of the Mortmain and Charitable Uses Act of Ontario.

SWORN before me at the City of St. Thomas in the County of Elgin this 29th day of November A.D. 1962.

A Commissioner, etc.

Registrar

This is Exhibit "J" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

231598 - Aldborough

164C
E'

No. 231598
Land Registry Division of Elgin (No. 11)
I CERTIFY that this instrument is registered as of

1:29 JUN 18 1980 in the

Land Registry Office at St. Thomas, Ontario.

LAND REGISTRAR

1:29

PROPERTY OF THE REGISTRY OFFICE

LEASE No.

DATED February 25, 1980

John Edward McColl,
Susie McColl,
R. R. #1,
RODNEY, Ontario NOL 2C0

— and —

REALOIL ENTERPRISES LIMITED,
P. O. Box 367,
CHATHAM, Ontario
N7M 5K5

LEASE AND GRANT

Regional Municipality or County: Elgin

Township: Aldborough

Lot: NW½ D Conc. 7

ELEXCO LTD.
826 KING ST.
LONDON, ONTARIO
N5W 2X6

1500

231598

PETROLEUM and NATURAL GAS LEASE and GRANT

Agreement of Lease made this 25th day of February 19 80

BETWEEN John Edward McColl (Farmer)

Susie McColl (His wife)

of the Township of Aldborough in the County of Elgin
Province of Ontario, (hereinafter called "the Lessor")
OF THE FIRST PART

—AND—

REALOIL ENTERPRISES LIMITED, a Company incorporated under the laws of the Province of Ontario, having its Head Office at Chatham, Ontario.

(hereinafter called "the Lessee")
OF THE SECOND PART

WITNESSETH that the Lessor, being the owner or entitled to become the owner, subject to any registered encumbrances, of all petroleum, natural gas and related hydrocarbons, and of all minerals, substances and other gas within, upon or under those certain lands in the Township of Aldborough in the County of Elgin Province of Ontario, containing 100 acres, more or less and described as follows:

The Northwest half of Lot lettered "D", in the Seventh Concession. SUBJECT TO an easement in favour of the Hydro-Electric Power Commission of Ontario registered the 28th day of July, 1949 as instrument #28585 for the Township of Aldborough, in the Registry Office for the Registry Division of the County of Elgin.

IN CONSIDERATION of the sum of Two Hundred 00/100 ($200.00) Dollars paid to the Lessor by the Lessee (the receipt whereof is hereby acknowledged by the Lessor) and subject to the rents hereinafter reserved and the royalties hereinafter excepted from this grant and the covenants of the Lessee hereinafter contained, DOTH HEREBY GRANT AND LEASE unto the Lessee the leased substances as hereinafter defined, upon or under the said lands as hereinbefore defined, together with the exclusive right and privilege insofar as the Lessor has the right to grant the same, to explore, drill for, win, take, remove, and dispose of the leased substances and for the said purposes to enter upon, use and occupy the said lands or so much thereof and to such extent as may be necessary or convenient and to drill wells, lay pipe lines including any and all necessary appurtenances, attachments and cathodic protection devices and build and install such tanks, stations, structures and roadways and to fence any portion of the said lands used as a well site as may be necessary for these purposes;

Five (5) E.H. J.McC. S.M. R.A.

TO HAVE AND TO ENJOY the same for a term of ~~ten (10)~~ years from and including the date hereof and so long thereafter as the leased substances or any of them are produced from the said lands, subject to the other provisions herein contained;

PROVIDED that if operations for the drilling of a well are not commenced on the said lands within one year from the date hereof, this Lease shall terminate and be at an end on. February 24th 1981 unless the Lessee shall have paid or tendered to the Lessor on or before the said date the sum of Two ($2.00) Dollar per acre, (hereinafter called the "delay rental"), which payment or tender shall confer the privilege of deferring the commencement of drilling operations for a period of one year from the said date, and that, in like manner and upon like payments or tenders, the commencement of drilling operations and the termination of this Lease shall be further deferred for like periods successively;

PROVIDED FURTHER that if at any time during the said term and prior to the discovery of production on the said lands, the Lessee shall drill a dry well or wells thereon, or if at any time during such term and after the discovery of production on the said lands all such production shall cease, then this Lease shall terminate at the next ensuing anniversary date hereof unless operations for the drilling of a further well on the said lands shall have been commenced or unless production or production operations shall have been resumed or unless the Lessee shall have paid or tendered the delay rental; in which latter event the immediately preceding proviso hereof governing the payment of the delay rental and the effect thereof, shall be applicable thereto;

AND FURTHER ALWAYS PROVIDED that if at the end of the said term the leased substances are not being produced from the said lands (whether or not the leased substances have theretofore been produced therefrom) and the Lessee is then engaged in drilling or working operations thereon, or if at any time after the expiration of the said term, production of the leased substances has ceased and the Lessee shall have commenced further drilling or working operations within Ninety (90) days after the cessation of said production, then this Lease shall remain in force so long as any drilling or working operations are prosecuted with no cessation of more than Ninety (90) consecutive days, and, if they result in the production of the leased substances or any of them, so long thereafter as the leased substances or any of them are produced from the said lands; provided that if drilling or working operations are interrupted or suspended as the result of any cause whatsoever beyond the Lessee's reasonable control, or if any well on the said lands or on any spacing unit of which the said lands or any portion thereof form a part, is shut-in, suspended or otherwise not produced as the result of a lack of or an intermittent market, or any cause whatsoever beyond the Lessee's reasonable control, the time of such interruption or suspension or non-production shall not be counted against the Lessee, anything hereinbefore contained or implied to the contrary notwithstanding.

THE LESSOR AND THE LESSEE HEREBY COVENANT AND AGREE WITH EACH OTHER AS FOLLOWS:

1. **Interpretation:—**

In this Lease, unless there is something in the subject or context inconsistent therewith, the expressions following shall have the following meaning, namely:

(a) "leased substances" shall mean and include:—
  (i) all petroleum, natural gas and related hydrocarbons; and
  (ii) all minerals, substances and other gas produced in association with the foregoing or found in any water contained in an oil or gas reservoir,

but shall not mean and include coal and valuable stone.

(b) "lands" shall mean all the lands hereinbefore described or such portion or portions thereof as shall not have been surrendered.

(c) "spacing unit" shall mean and include the area allocated to a well for the purpose of drilling for and/or producing the leased substances or any of them by or under any law of the Province of Ontario now or hereafter in effect governing the spacing of petroleum and/or natural gas wells.

(d) "commercial production" shall mean the output from a well of such quantity of the leased substances or any of them as, considering the cost of drilling and production operations and price and quality of the leased substances, after a production test of Thirty (30) days, would commercially and economically warrant the drilling of a like well in the vicinity thereof.

2. **Royalties:—**

(a) The Lessee shall pay to the Lessor a royalty in the amount equal to the value at the wellhead:
  (i) of twelve and one-half per cent (12½%) of all the leased substances, other than natural gas, produced from the said lands and sold, or used for the purposes other than operations hereunder: and
  (ii) of a percentage of all natural gas, including casinghead gas, produced from the said lands and sold, or used for the purposes other than operations hereunder, which percentages shall be based on the actual rate of production and shall be:

An amount up to 500,000 cubic feet per day	3%
500,001 to 2,000,000 cubic feet per day	5%
2,000,001 to 4,000,000 cubic feet per day	7½%
An amount exceeding 4,000,000 cubic feet per day	12½%

(b) The royalties as determined under this clause shall be payable on or before the last day of the month following the month for which such royalty is paid.

(c) Notwithstanding anything to the contrary herein contained, the Lessee in its operations hereunder, shall have the use, free from royalty, of water, other than water from the Lessor's water wells or from the Lessor's artificial surface reservoirs, and of leased substances produced from the said lands.

3. **Shut-In Wells:—**

If any well or wells on the said lands are shut-in, suspended or otherwise not produced during any year ending on an anniversary date as the result of a lack of or an intermittent market, or any cause whatsoever beyond the Lessee's reasonable control, the Lessee shall pay the Lessor at the expiration of each said year for that year a sum equal to ----Two Hundred---------- ($ 200.00--------) Dollars for each such well and each such well shall be deemed to be a producing well hereunder.

4. **Records of Production:—**

The Lessee shall make available to the Lessor during normal business hours at the Lessee's address hereinafter mentioned, the Lessee's records relative to the quantity of leased substances produced from the said lands.

5. **Lesser Interest:—**

If the leased substances and/or the said lands be held by the Lessor in undivided ownership with another person or persons, then the Lessor shall be entitled to receive only a percentage of the rentals and royalties herein reserved, computed in accordance with the Lessor's percentage interest in the leased substances and/or the said lands.

6. **Indemnification:—**

The Lessee shall indemnify the Lessor against all actions, suits, claims and demands by any person or persons whomsoever in respect of any loss, injury, damage or obligation to compensate arising out of or connected with the work carried on by the Lessee on the said lands or in respect of any breach of any of the terms and conditions of this Lease insofar as the same relates to and affects the said lands.

7. **Compensation and Restoration of Surface:—**

The Lessee shall pay and be responsible for all damages and injuries sustained by the Lessor caused by or attributable to the operations of the Lessee, and upon the abandonment of any well and the cessation of operations by the Lessee on the well site, and upon the surrender of the Lease as herein provided, the Lessee shall restore the surface thereof to the same condition, so far as may be practicable, as existed before the entry thereon and use thereof by the Lessee.

8. **Taxes Payable by the Lessor:—**

The Lessor shall promptly satisfy all taxes, rates and assessments of whatsoever nature or kind made or imposed against or in respect of the surface of the said lands, or that may be assessed or levied, directly or indirectly, against the Lessor by reason of the Lessor's interest in production obtained from the said lands or the Lessor's ownership of mineral rights in the said lands.

9. **Taxes payable by the Lessee:—**

The Lessee shall pay all taxes, rates and assessments that may be assessed or levied in respect of the undertaking and operations of the Lessee on, in, over or under the said lands, and shall further pay all taxes, rates and assessments that may be assessed or levied directly or indirectly against the Lessee by reason of the Lessee's interest in production from the said lands.

10. Correction of Land Description:--

If the description of the said lands herein contained be incorrect or insufficient for the purpose of registration, the Lessor hereby appoints the leasing agent and/or any land department or other authorized employee of the Lessee to be the Lessor's attorney to correct this Lease accordingly, or if it does not include all of the lands intended to be described in this Lease, the Lessor covenants to execute a new lease in the same form in every respect as this Lease, but containing a proper description of all the lands intended to be included in this Lease as aforesaid, if so requested by the Lessee.

11. Clearance of Prior Leases:—

The Lessor covenants that save as to this Lease there is no valid lease of the leased substances, and if a lease of the leased substances be registered against the said lands or any portion thereof, the Lessor hereby authorizes and empowers the Lessee, at the Lessee's option and expense, to take any proceedings to obtain a surrender, release, discharge or order vacating such lease or to obtain a declaration from the Supreme Court of Ontario that such lease is invalid and the Lessor further covenants and agrees to cooperate with the Lessee in any and all such proceedings.

12. Registration of Lease:—

The Lessee shall register this Lease in the Registry Office or in the Land Titles Office for the area in which the said lands are situated and the Lessee shall withdraw or discharge the document so registered within a reasonable time after termination of this Lease.

13. Pooling:—

The Lessee is hereby given the right and power at any time and from time to time to pool or combine the said lands, or any portion thereof, or any zone or formation underlying the said lands or any portion thereof, with any other lands or any zone or formation underlying the same, but so that the lands so pooled and combined (hereinafter referred to as a "unit") shall not exceed One (1) spacing unit as herein defined. In the event of such pooling or combining, the Lessor shall receive on production of the leased substances from the unit in lieu of the royalties herein specified, only such portion of such royalties as the surface area of that portion of the said lands placed in the unit bears to the total surface area of all the land in the unit. Further in the event of such pooling or combining, any payment made in accordance with paragraph 3 hereof shall be apportioned in the same way as royalties. Drilling operations on, or production of the leased substances from, or the presence of a shut-in or suspended well on, any land included in the unit shall have the same effect in continuing this Lease in force and effect as to the whole of the said lands, as if such drilling operations or production of the leased substances were upon or from the said lands or some portion thereof, or as if such shut-in or suspended well were located on the said lands, or some portion thereof.

14. Operations:—

(a) The Lessee shall conduct all its operations on the said lands in a diligent, careful and workmanlike manner and in compliance with the provisions of law applicable to such operations and where such provisions of law conflict or are at variance with the provisions of this Lease, such provisions of law shall prevail.

(b) The Lessee covenants to bury pipe lines below ordinary plough depth when required by the Lessor.

15. Discharge of Encumbrances:—

The Lessee may at its option pay or discharge the whole or any portion of any tax, mortgage, balance of purchase money, lien or encumbrance of any kind or nature whatsoever upon the said lands or the leased substances which has priority to this Lease, in which event the Lessee shall be subrogated to the rights of the holder or holders thereof and may in addition thereto at the Lessee's option, reimburse itself by applying on the amount so paid by the Lessee, the rentals, royalties, or other sums accruing to the Lessor under the terms of this Lease.

16. Surrender:—

Notwithstanding anything herein contained, the Lessee may at any time or from time to time determine or surrender this Lease and the term hereby granted as to the whole or any part or parts of the leased substances and/or the said lands, upon giving the Lessor prior written notice to that effect, whereupon this Lease and the said term shall terminate as to the whole or any part or parts thereof so surrendered and the obligations of the Lessee shall, save as provided in paragraph 7 hereof, be extinguished or correspondingly reduced as the case may be. Any reduction in the delay rental under the terms of this clause will be in the same proportion as the amount of acreage surrendered bears to the total acres under lease. The Lessee shall not be entitled to a refund of any rental or royalty theretofore paid.

17. Removal of Equipment:—

The Lessee shall at all times during the currency of this Lease and for a period of Six (6) months after the termination hereof, so long as it is not in default or arrears, have the right to remove all or any of its machinery, equipment, structures, pipe lines, casing and materials from the said lands.

18. Default:—

In the case of the breach or non-observance or non-performance on the part of the Lessee of any covenant, proviso, condition, restriction or stipulation herein contained which ought to be observed or performed by the Lessee and which has not been waived by the Lessor, the Lessor shall, before bringing any action with respect thereto or declaring any forfeiture, give to the Lessee written notice setting forth the particulars of and requiring it to remedy such default, and in the event that the Lessee shall fail to commence to remedy such default within a period of Ninety (90) days from receipt of such notice, and thereafter diligently proceed to remedy the same, then except as hereinafter provided, this Lease shall thereupon terminate and it shall be lawful for the Lessor into or upon the said lands (or any part thereof in the name of the whole) to re-enter and the same to have again, repossess and enjoy; PROVIDED that this Lease shall not terminate nor be subject to forfeiture or cancellation if there is located on the said lands a well capable of producing the leased substances or any of them, and in that event the Lessor's remedy for any default hereunder shall be for damages only.

19. Quiet Enjoyment:—

The Lessor covenants and warrants that the Lessor has good title to the leased substances and the said lands, has good right and full power to grant and demise the same and the rights and privileges in the manner aforesaid, and that upon the Lessee observing and performing the covenants and conditions on the Lessee's part herein contained, the Lessee shall and may peaceably possess and enjoy the same and the rights and privileges hereby granted during the currency of this Lease without any interruption or disturbance from or by the Lessor or any other person whomsoever.

20. Further Assurances:—

The Lessor and the Lessee hereby agree that they will each do and perform all such acts and things and execute all such deeds, documents and writings and give all such assurances as may be necessary to give effect to this Lease.

21. Assignment:—

The Parties hereto and each or either of them may at any time and from time to time delegate, assign, sub-let or convey to any other person or persons, corporation or corporations, all or any of the property, powers, rights and interest obtained by or conferred upon them respectively hereunder and as the same relate to all or any part of the said lands, and may enter into all agreements, contracts and writings and do all necessary acts and things to give effect to the provisions of this clause; provided that no assignment of royalties, rentals or other monies payable hereunder and no change or division in the ownership of the said lands or any part thereof, by the Lessor, however accomplished shall operate to enlarge the obligations or diminish the rights of the Lessee nor shall any such assignment be binding upon the Lessee unless and except the same is for the entire interest of the Lessor in all such sums remaining to be paid or to accrue hereunder and provided further that the Lessor shall give the Lessee Thirty (30) days' notice in writing in a form satisfactory to the Lessee of any such delegation, assignment, sub-letting or conveyance by the Lessor; provided further that in the event that the Lessee

shall assign this Lease as to any part or parts of the said lands, then the delay rental shall be apportioned amongst the several leaseholders rateably according to the surface area of each and the several leaseholders shall be individually responsible for the payment of their portion of the delay rental and for the payment of royalties hereby reserved unto the Lessor in respect of any production from wells drilled on their respective parts of the said lands. Should the Assignee or Assignees of any such part or parts fail to pay the proportionate part of the delay rental or the royalty payable by him or them, such failure to pay shall not operate to terminate or affect this Lease insofar as it relates to and comprises the part or parts of the said lands in respect of which the Lessee or its Assignees shall make due payment of rental and royalty.

22. **Manner of Payments:—**

All payments to the Lessor provided for in this Lease shall at the Lessee's option be paid or tendered either to the Lessor or to the Lessor's Agent named in and pursuant to this clause or to "the depository" herein named. All such payments or tenders may be made by cheque or draft of the Lessee payable to the order of the Lessor or his Agent, or in cash, either mailed postage prepaid, registered or delivered to the Lessor or his Agent, as the case may be, or to the depository, as the Lessee may elect. Payments or tenders made by mail as herein provided shall be deemed to have been received by the addressee Forty-Eight (48) hours after such mailing.

The Lessor does hereby appoint ..... John Edward McColl ..... of

RR#1 RODNEY, Ontario N0L 2C0 ..... as his agent as aforesaid and

The Royal Bank of Canada ..... (Bank or Trust Company)

at 244 Furnival Road, P. O. Box 8, ...

RODNEY, Ontario N0L 2C0 ..... and its successors, as his depository as aforesaid.

All payments to the depository shall be for the credit of the Lessor or his Agent, as the case may be. The Agent and the depository shall be deemed to be acting on behalf of the Lessor and shall continue as the Agent and depository, respectively, of the Lessor for receipt of any and all sums payable hereunder regardless of any change or division in ownership (whether by sale, surrender, assignment, sublease or otherwise) of the said lands or any part thereof or the leased substances therein contained or of the royalties or other payments hereunder unless and until the Lessor gives the notice mentioned herein. All payments made to the Agent or depository as herein provided shall fully discharge the Lessee from all further obligation and liability in respect thereof. No change in Agent or depository shall be binding upon the Lessee unless and until the Lessor shall have given Thirty (30) days' notice in writing to the Lessee to make such payments to another Agent or depository at a given address, which changes will be specified in such notice; provided however, that only one such Agent and one such depository, both of whom shall be resident in Canada, shall have authority to act on behalf of the Lessor at any one time.

23. **Entire Agreement:—**

This Lease expresses and constitutes the entire agreement between the Parties, and no implied covenant or liability of any kind is created or shall arise by reason of these presents or anything herein contained.

24. **Notices:—**

All notices to be given hereunder may be given by letter delivered or mailed, postage prepaid, registered and addressed to

the Lessee at P. O. Box 367, CHATHAM, Ontario N7M 5K5 .....

and to the Lessor at .... RR#1 RODNEY, Ontario N0L 2C0 .....

..... or such other address as either from time to time may appoint in writing, and every such notice so mailed shall be deemed to be given to and received by the addressee Forty-Eight (48) hours after such mailing.

25. If the standard of measurement applicable to the transaction contemplated herein is changed by law to the metric or any other system all measurements provided for herein shall be interpreted as referring to their metric or other applicable equivalents.

26. We, John Edward McColl and Susie McColl being spouses within the meaning of Section 1(f) of The Family Law Reform Act of Ontario, 1978 do hereby consent to the transaction evidenced by this instrument and the registration of same on the title to the lands hereinbefore described.

27. **Enuring Clause:—**

Subject as hereinbefore provided, this Lease shall enure to the benefit of and be binding upon the Parties hereto and each of them, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the Lessor and the Lessee have executed and delivered this Lease, the day and year first above written.

SIGNED, SEALED AND DELIVERED
In the Presence of:

.....

.....

LESSOR

x John Edward McColl

.....

x Susie McColl

REALOIL ENTERPRISES LIMITED — LESSEE

.....

PRESIDENT

.....

Dye & Durham Limited — Toronto, Canada
Form No. 347

AFFIDAVIT OF SUBSCRIBING WITNESS

I, Bent E. Herlufsen

of the City of London

in the County of Middlesex

make oath and say:

I am a subscribing witness to the attached instrument and I was present and saw it executed

at the Township of Aldborough by John Edward McColl and Susie McColl

*See footnote

*See footnote

I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

SWORN before me at the City of London
in the County of Middlesex
this 29 day of February 19 80

Elaine Stalker
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

ELAINE STALKER, a Commissioner, etc.,
Province of Ontario, for Elexco Ltd.
Expires February 2, 1983.

* *Where a party is unable to read the instrument or where a party signs by making his mark or in foreign characters add "after the instrument had been read to him and he appeared fully to understand it". Where executed under a power of attorney insert "(name of attorney) as attorney for (name of party)"; and for next clause substitute "I verily believe that the person whose signature I witnessed was authorized to execute the instrument as attorney for (name)".*

MARCH, 1978

AFFIDAVIT AS TO AGE AND SPOUSAL STATUS

XXWE John Edward McColl and Susie McColl

of the Township of Aldborough

in the County of Elgin

* If attorney see footnote

make oath and say: When we executed the attached instrument,

XXWE were at least eighteen years old.

Within the meaning of section 1(f) of The Family Law Reform Act, 1978:—

Strike out inapplicable clauses.

~~XXXXXXXXXXXXXXXXXX~~

b) We were spouses of one another.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

**Not a Matrimonial Home, etc. see footnote.

Resident of Canada, etc.

(SEVERALLY) SWORN before me at the Township of Aldborough in the County of Elgin
this 25th day of February 19 80

x John Edward McColl

x Susie McColl

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

BENT E. HERLUFSEN, a Commissioner, etc.,
Province of Ontario for Elexco Ltd.
Expires November 21, 1980.

*Where affidavit made by attorney add "When I executed the attached instrument as attorney for (name), he/she was (spousal status and, if applicable, name of spouse) within the meaning of Section 1(f) of The Family Law Reform Act, 1978, and when he/she executed the power of attorney, he/she had attained the age of majority".

**Where spouse does not join in or consent, see Section 22(3) of The Family Law Reform Act, 1978 (or complete separate affidavit).

...ll Instructions
...se Side

Form 1

DYE & DURHAM CO. LIMITED
FORM NO. 500

The Land Transfer Tax Act, 1974

AFFIDAVIT OF RESIDENCE AND OF VALUE OF THE CONSIDERATION

IN THE MATTER OF THE CONVEYANCE OF *(insert brief description of land)* ...The Northwest half of Lot lettered ..."D", in the Seventh Concession, Township of Aldborough, County of Elgin.

BY *(print names of all transferors in full)* .....John Edward McColl
.....Susie McColl

TO *(see instruction 1 and print names of all transferees in full)* .....Realoil Enterprises Limited

I, *(see instruction 2 and print name(s) in full)* .....John L. Norman

MAKE OATH AND SAY THAT:

1. I am *(place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent(s))* *(see instruction 2)*
   - ☐ (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
   - ☐ (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
   - ☐ (c) A transferee named in the above-described conveyance;
   - ☒ (d) The authorized agent ~~or solicitor~~ acting in this transaction for *(insert name(s) of principal(s))* ...Realoil Enterprises Limited... described in paragraph(s) ~~x(c)xxxxxx~~ (c) above; *(strike out references to inapplicable paragraphs)*
   - ☐ (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for *(insert name(s) of corporation(s))* ..... described in paragraph(s) (a), (b), (c) above. *(strike out references to inapplicable paragraphs)*
   - ☐ (f) A transferee described in paragraph ( ) *(insert only one of paragraph (a), (b) or (c) above, as applicable)* and am making this affidavit on my own behalf and on behalf of *(insert name of spouse)* ..... who is my spouse described in paragraph ( ). *(insert only one of paragraph (a), (b) or (c) above, as applicable)*

   and as such, I have personal knowledge of the facts herein deposed to.
2. I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses f and g of subsection 1 of section 1 of the Act. *(see instruction 3)*
3. The following persons to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed are non-resident persons within the meaning of the Act. *(see instruction 4)* ..... none .....
4. **THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:**

(a) Monies paid or to be paid in cash		$ nil
(b) Mortgages (i) Assumed *(show principal and interest to be credited against purchase price)*		$ nil
(ii) Given back to vendor		$ nil
(c) Property transferred in exchange *(detail below)*		$ nil
(d) Securities transferred to the value of *(detail below)*		$ nil
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject		$ nil
(f) Other valuable consideration subject to land transfer tax *(detail below)*		$ nil
(g) VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX *(TOTAL OF (a) to (f))*	$ nil	$ nil
(h) VALUE OF ALL CHATTELS – items of tangible personal property *(Retail Sales Tax is payable on the value of all chattels unless exempt under the provisions of The Retail Sales Tax Act, R.S.O. 1970, c. 415, as amended)*		$ nil
(i) Other consideration for transaction not included in (g) or (h) above		$ nil
(j) TOTAL CONSIDERATION		$ nil

ALL BLANKS MUST BE FILLED IN. INSERT "NIL" WHERE APPLICABLE.

5. If consideration is nominal, describe relationship between transferor and transferee and state purpose of conveyance. *(see instruction 5)* .....
6. Other remarks and explanations, if necessary ...The attached instrument is a conveyance of only the mineral right to the land, the consideration for the conveyance is wholly dependant upon the quantity or value of the minerals that are won, taken, removed or raised, and exemption from the Land Transfer Tax is claimed pursuant to Section 2, of Ontario Regulation 66/80.....

SWORN before me at the City of London
in the County of Middlesex
this 18th day of June 1980

Elaine Stalker
A Commissioner for taking Affidavits, etc.

ELAINE STALKER, a Commissioner, etc., Province of Ontario, for Elexco Ltd. Expires February 2, 1983.

J. E. McColl
(signature(s))

PROPERTY INFORMATION RECORD

A. Describe nature of instrument: Oil and Gas Lease

B. (i) Address of property being conveyed *(if available)* ...Not Applicable...

(ii) Assessment Roll No. *(if available)* ...Not Applicable...

C. Mailing address(es) for future Notices of Assessment under The Assessment Act for property being conveyed *(see instruction 6)* ..... Not Applicable .....

D. (i) Registration number for last conveyance of property being conveyed *(if available)* ....Not Applicable.....

(ii) Legal description of property conveyed: Same as in D.(i) above. Yes ☐ No ☐ Not Known ☒

E. Name(s) and address(es) of each transferee's solicitor .....
Not Applicable

For Land Registry Office use only
REGISTRATION NO.
Land Registry Office No.
Registration Date

This is Exhibit "K" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

232560 - Aldborough

DATED: February 25,1980

164 C
E

REALOIL ENTERPRISES
LIMITED

and

RAYROCK RESOURCES LIMITED

: : : : : : : : : : : : : : : : :

ASSIGNMENT OF LEASE

: : : : : : : : : : : : : : : : :

MYERS, WOODS & WAKELY
BARRISTERS, Etc.
41 E. MARKET SQ.
CHATHAM, Ontario

232560

No.
Land Registry Division of Elgin (No. 11)
I CERTIFY that this instrument is registered as of

11:04 AUG 6 1980 in the

Land
Registry Office
at St. Thomas,
Ontario.

LAND REGISTRAR

11:04

PROPERTY OF THE
REGISTRY OFFICE

Elexco Ltd.

$1/500

Page 76

ASSIGNMENT OF LEA[illegible]

232560

6

THIS AGREEMENT made as of this 25th day of February, 1980

B E T W E E N:

REALOIL ENTERPRISES LIMITED, a company incorporated under the laws of the Province of Ontario, having its head office at Chatham, Ontario

Hereinafter called the "ASSIGNOR"

OF THE FIRST PART

-and-

LAYROCK RESOURCES LIMITED, a corporation authorized to carry on business in the Province of Ontario

Hereinafter called the "ASSIGNEE"

OF THE SECOND PART

WHEREAS by a Petroleum and Natural Gas Lease and Grant (hereinafter referred to as "the Lease") dated February 25, 1980 and registered in the Registry Office for the Land Registry Division of Elgin (No. 11) on June 18, 1980 as number 231598 made between John Edward McColl and Susie McColl, both of the Township of Aldborough, in the County of Elgin as Lessors and the Assignor as Lessee the lands described in Schedule "A" hereto were demised and leased to the Lessee for the term and upon the conditions therein set out.

AND WHEREAS the Assignor has now agreed to assign to the Assignee the Lease upon the terms and conditions herein set out.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the mutual covenants and agreements by and between the parties:

1. The Assignor hereby transfers, assigns, sets over and conveys unto the Assignee effective as of February 25, 1980 (hereinafter referred to as the "effective date") all its right, title, estate and interest in and to the said Lease together with its entire interest thereunder in and to the lands described in Schedule "A" hereto and the leased substances contained therein and demised thereby to have and to hold the same unto the Assignee from and after the effective date for the residue of the term of the said Lease and any renewals or extensions thereof for its sole

use and benefit absolutely subject however to payment of the rents and royalties and performance and observance of the covenants, conditions and stipulations in the said Lease reserved and contained and on the Lessee's part to be paid, performed and observed and subject also to and reserving to the Assignor herein a gross overriding royalty interest of 5% of the value of the leased substances as defined in the Lease produced, saved and marketed from the lands described in Schedule "A" hereto.

2. The Assignor warrants that no person or corporation claiming by, through or under it has any right, title or interest in and to the subject matter of this conveyance save as aforesaid and subject to this warranty the Assignor makes no other warranty whatsoever with respect to title.

3. The Assignor shall and will from time to time and at all times hereafter at the request and cost of the Assignee execute such further assurances as the Assignee may reasonably require with respect to the said Lease.

4. The Assignor hereby covenants and agrees with the Assignee that it now has in it, good right, full power and absolute authority to make this Assignment for the purpose and in the manner aforesaid according to the true intent and meaning of these presents.

5. The Assignee hereby covenants and agrees with the Assignor that the Assignee shall and will indemnify and save harmless the Assignor of, from and against the payment of all future rents and royalties and of, from and against the observance and performance of the Lessee's covenants, conditions and agreements in the Lease from and after the effective date hereof.

6. And it is hereby agreed and declared that these presents and everything herein shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have caused their

respective corporate seals to be affixed attested by the hands of their proper officers duly authorized in that behalf.

REALOIL ENTERPRISES LIMITED
Per: Leo F. Blair
President

RAYROCK RESOURCES LIMITED
Per: President

Secretary

SCHEDULE "A"

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Aldborough, in the County of Elgin and Province of Ontario containing 100 acres more or less described as the Northwest half of Lot lettered "D" in the Seventh Concession subject to an easement in favour of the Hydro-Electric Power Commission of Ontario registered July 28, 1949 as instrument number 28585 for the Township of Aldborough, in the Registry Office for the Registry Division of the County of Elgin.

Refer to all instructions on Reverse Side

THE LAND TRANSFER TAX ACT, 1974
AFFIDAVIT OF RESIDENCE AND OF VALUE OF THE CONSIDERATION

IN THE MATTER OF THE CONVEYANCE OF *(insert brief description of land)* the Northwest half of Lot lettered D in the Seventh Concession, Township of Aldborough, County of Elgin

BY *(print names of all transferors in full)* Kealoil Enterprises Limited

TO *(see instruction 1 and print names of all transferees in full)* Rayrock Resources Limited

X I, *(see instruction 2 and print name(s) in full)* DAVID ROBERT CROMBIE

MAKE OATH AND SAY THAT:

1. I am *(place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent(s))*: *(see instruction 2)*
   - ☐ (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
   - ☐ (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
   - ☐ (c) A transferee named in the above-described conveyance;
   - ☐ (d) The authorized agent or solicitor acting in this transaction for ..... *(insert name(s) of principal(s))* described in paragraph(s) (a), (b), (c) above; *(strike out references to inapplicable paragraphs)*
   - ☒ (e) The President, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ authorized to act for RAYROCK RESOURCES LIMITED *(insert name(s) of corporation(s))* described in paragraph(s) (a), (b), (c) above; *(strike out references to inapplicable paragraphs)*
   - ☐ (f) A transferee described in paragraph ( ) *(insert only one of paragraph (a), (b) or (c) above, as applicable)* and am making this affidavit on my own behalf and on behalf of ..... *(insert name of spouse)* who is my spouse described in paragraph ( ); *(insert only one of paragraph (a), (b) or (c) above, as applicable)*

   and as such, I have personal knowledge of the facts herein deposed to.
2. I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses f and g of subsection 1 of section 1 of the Act. *(see instruction 3)*
3. The following persons to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed are non-resident persons within the meaning of the Act. *(see instruction 4)* none
4. THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:

(a) Monies paid or to be paid in cash	$ nil	
(b) Mortgages (i) Assumed *(show principal and interest to be credited against purchase price)*	$ nil	
(ii) Given back to vendor	$ nil	
(c) Property transferred in exchange *(detail below)*	$ nil	
(d) Securities transferred to the value of *(detail below)*	$ nil	
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	$ nil	
(f) Other valuable consideration subject to land transfer tax *(detail below)*	$ nil	
(g) VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX *(total of (a) to (f))*	$ nil	$ nil
(h) VALUE OF ALL CHATTELS — items of tangible personal property *(Retail Sales Tax is payable on the value of all chattels unless exempt under the provisions of The Retail Sales Tax Act, R.S.O. 1970, c. 415, as amended)*		$ nil
(i) Other consideration for transaction not included in (g) or (h) above		$ nil
(j) TOTAL CONSIDERATION		$ nil

ALL BLANKS MUST BE FILLED IN. INSERT "NIL" WHERE APPLICABLE.

5. If consideration is nominal, describe relationship between transferor and transferee and state purpose of conveyance. *(see instruction 5)* none
6. Other remarks and explanations, if necessary Lease was acquired by Assignor for Assignee and is being conveyed ~~XXXXXXXXXXXXXXXXXXXXXXXXXX~~ for a 5% overriding royalty interest.

SWORN before me at the City of Chatham
in the County of Kent
this 28th day of July 19 80

(signature(s))

A Commissioner for taking Affidavits, etc. LEO F. GAISWINKLER, a Commissioner, etc., Province of Ontario, for Gaiswinkler Enterprises Limited and Kealoil Enterprises Limited. Expires November 1, 1982.

PROPERTY INFORMATION RECORD

A. Describe nature of instrument Assignment of Lease

B. (i) Address of property being conveyed *(if available)* Northwest ½ Lot lettered D, Conc. 7 Township of Aldborough, County of Elgin

(ii) Assessment Roll # *(if available)* not known

C. Mailing address(es) for future Notices of Assessment under The Assessment Act for property being conveyed *(see instruction 6)* Rayrock Resources Limited Suite 1001, 2200 Yonge St., Toronto

D. (i) Registration number for last conveyance of property being conveyed *(if available)* not known

(ii) Legal description of property conveyed: Same as in D.(i) above. Yes ☐ No ☐ Not Known ☒

E. Name(s) and address(es) of each transferee's solicitor

For Land Registry Office use only
REGISTRATION NO.
LAND REGISTRY OFFICE NO.
REGISTRATION DATE

This is Exhibit "L" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

Province of Ontario

Document General

Form 4 — Land Registration Reform Act, 1984

CCNS
66 Gerrard St East
Toronto, Ont M5B 1G3
Form L1206

D

FOR OFFICE USE ONLY

053975 6

CERTIFICATE OF REGISTRATION
NORFOLK (37) SIMCOE

'99 JUN 7 PM 2 04

LAND REGISTRAR

New Property Identifiers — Additional See Schedule ☐

Executions — Additional See Schedule ☐

(1) Registry [X] Land Titles ☐ (2) Page 1 of 21 pages

(3) Property Identifier(s) Block Property — Additional See Schedule ☐

(4) Nature of Document

Assignment of Overriding Royalty in Oil and Gas Leases

(5) Consideration

----Two---------- Dollars $ 2.00

(6) Description

Various lots and concessions, (See Box (8) in the Regional Municipality of Haldimand-Norfolk, in the Province of Ontario, described in Registered Instrument Nos. 340717, 376289, 399287 and 492301.

(7) This Document Contains: (a) Redescription New Easement Plan/Sketch ☐ (b) Schedule for: Description ☐ Additional Parties ☐ Other [X]

(8) This Document provides as follows:

WHEREAS by Indentures registered in the Registry Office for the Registry Division of Norfolk(No. 37) as Nos. 340717,376289,399287 and 492301,Craven Oil Company Limited, Inc. conveyed to Gaiswinkler Enterprises Limited an overriding royalty in the petroleum, natural gas and related substances which may be produced under the terms of those certain Oil and Gas Leases and Grants located in various lots and concessions in the Township of Norfolk (formerly in the Township of Middleton,County of Norfolk); in the Township of Norfolk (formerly in the Township of North Walsingham, County of Norfolk): in the Township of Norfolk(formerly in the Township of South Walsingham, County of Norfolk); in the Township of Delhi(formerly the Townships of Windham and Charlotteville, both County of Norfolk); in the City of Nanticoke(formerly the Township of Woodhouse, County of Norfolk); now in the Regional Municipality of Haldimand-Norfolk, in the Province of Ontario.
AND WHEREAS the rights by said Indentures granted are now being re-assigned by Gaiswinkler Enterprises Limited to Leo F. Gaiswinkler and Eugenie Gaiswinkler, as joint tenants and not tenants in common.

Continued on Schedule ☐

(9) This Document relates to instrument number(s)

340717, 376289, 399287 and 429301 and 515512

(10) Party(ies) (Set out Status or Interest)

Name(s)	Signature(s)	Date of Signature Y	M	D
GAISWINKLER ENTERPRISES LIMITED	Andrew Gaiswinkler Andrew Gaiswinkler President	1999	06	03
Assignor	I have authority to bind the Corporation			

(11) Address for Service R. R. # 3, P.O. Box 367, Chatham, Ontario N7M 5K5

(12) Party(ies) (Set out Status or Interest)

Name(s)	Signature(s)	Date of Signature Y	M	D
GAISWINKLER, Leo F.	Leo F. Gaiswinkler	1999	06	03
GAISWINKLER, Eugenie We are at least eighteen years of age. Assignees as Joint Tenants	Eugenie Gaiswinkler	1999	06	03

(13) Address for Service ~~22135 Wilson Drive, RR 3, Chatham, Ontario N7M 6J8~~

(14) Municipal Address of Property

MULTIPLE

(15) Document Prepared by:

L. F. Gaiswinkler
22135 Wilson Drive, RR 3
Chatham, Ontario N7M 6J8

FOR OFFICE USE ONLY

Fees and Tax	
Registration Fee	58.00
	(1)
Total	

10174 (12/84)

AND WHEREAS by Agreement made as of the 28th day of May, 1980 and registered on July 4, 1980 in the Registry Division of Norfolk (No. 37) as Instrument No. 399287, Craven Oil Company Limited, Inc. assigned again a further Gross Overriding Royalty in additional Oil and Gas Leases unto Gaiswinkler Enterprises Limited.

AND WHEREAS by Agreement made as of the 10th day of June, 1985 and registered on July 31, 1985 in the Registry Division of Norfolk (No. 37) as Instrument No. 429301, Craven Oil Company Limited, Inc. assigned a further Gross Overriding Royalty in certain Oil and Gas Leases unto Gaiswinkler Enterprises Limited.

AND WHEREAS by Agreement Craven Oil Company Limited, Inc. assigned its interest in the said Oil and Gas Leases to Preston Trail Gas Corp. and;

WHEREAS Preston Trail Gas Corp. assigned its interest in these leases to 1073890 Ontario Limited, O/A Greentree Gas & Oil Limited, who is operating the leases and the gas wells on the leased lands, effective February 1, 1996 as Instrument No. 515512 in the Registry Division of Norfolk (No. 37).

WHEREAS the Assignor is the lawful, registered owner of an Overriding Royalty interest in certain Oil and Gas Leases and Grants (which leases and grants are hereinafter referred to as the "said leases") the particulars of which are set forth in Schedule "A" attached to and forming part of this Assignment;

AND WHEREAS the Assignor now desires to assign its interest in the said leases and the Gross Overriding Royalty unto the Assignees.

1. In consideration of other valuable consideration and the sum of TWO DOLLARS ($2.00) of lawful money of Canada, the Assignor does by these presents assign, transfer, set over and convey unto the Assignees the Overriding Royalties hereinafter set forth in the petroleum, natural gas and related petroleum substances which may be produced under the terms of those certain oil and gas leases or grants covering lands situated in the Township of Norfolk, in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of Middleton, in the County of Norfolk); in the Township of Norfolk, in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of North Walsingham, in the County of Norfolk); in the Township of Norfolk, in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of South Walsingham, in the County of Norfolk); in the Township of Delhi, in the Regional Municipality of Haldimand-Norfolk (formerly in the Townships of Windham and Charlotteville, both in the County of Norfolk), in the City of Nanticoke, in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of Woodhouse in the County of Norfolk) in the Province of Ontario, which said leases or grants are more particularly described in Schedule "A" attached hereto.

The Overriding Royalties herein conveyed are:

One-sixteenth of eight-eighths (1/16 of 8/8) of the current market value of any and all crude oil, natural gas and/or related petroleum substances produced, saved and marketed from time to time and at all times from the lands covered by the leases or grants set out in Schedule "A" hereto and/or to which the Assignor may be entitled pursuant to the terms and conditions of the said leases or grants including any extensions or renewals thereof. The Overriding Royalties herein conveyed shall not be subject to deductions or any expenses relating to operating, pipeline or transportation, compression, treating, processing and the like, provided however the said Overriding Royalties shall bear their proportionate share of all severance and production taxes.

2. The Assignor hereby covenants and agrees with the Assignees as follows:
   a) That it has good right, full power and absolute authority to assign the said leases and the residue unexpired of the terms thereof and its interest therein and in the lands and premises therein described according to the true intent and meaning of these presents.
   b) That the Assignor shall and will from time to time and at all times hereafter at the request of the Assignees do and perform all such acts and things and execute all such deeds, documents and writings, and give all such further assurances of the said lands and premises and leased substances and the leases as the Assignees shall reasonably require.
   c) That notwithstanding any act of the Assignor the leases are good, valid and subsisting and the rentals thereby reserved are not in arrears at the date hereof.
3. The Assignees covenants and agrees with the Assignor as follows:
   a) That the Assignees will indemnify and save harmless the Assignor from and against any and all claims, demands, actions and suits of whatsoever nature or kind arising in respect of the leases or of the said lands and premises or of the leased substances therein and thereby demised, as and from the date hereof.
   b) That the Assignees shall and will indemnify and save harmless the Assignor of, from and against the payment of all future rents and royalties, and of, from and against the observance and performance of the Lessee's covenants, conditions and agreements in the said leases contained.
4. It is hereby agreed and declared, by and between the parties hereto, that this Assignment and everything herein contained shall enure to the benefit of and be binding upon the parties hereto, their respective successors, assigns, heirs, executors, administrators and legal representatives or person who succeeds or takes on the Parties' obligations.

IN WITNESS WHEREOF the parties hereto have executed and delivered these presents as of the day and year first above written.

GAISWINKLER ENTERPRISES LIMITED

PER: Andrew Gaiswinkler

Andrew Gaiswinkler, President

I have authority to bind the Corporation

ATTEST:

Kandy L Osborne

Leo F. Gaiswinkler

Kandy L Osborne

Eugenie Gaiswinkler

This is Exhibit "M" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation,
Expires March 16, 2024

RECEIVED 340717

DATED July 1st 1972

CRAVEN OIL COMPANY LIMITED INC.

-and-

QUILLIAN, BOYCHUK & ASSOCIATES LIMITED

9.46

AGREEMENT

75.50

MYERS & WOODS
BARRISTERS, ETC.
41 E. MARKET SQ.
CHATHAM, ONTARIO

340717
No.
Registry Division of Norfolk (No. 37)
I CERTIFY that this instrument is registered as of
9 46 A.M.
Registry Office at Simcoe, Ontario. AUG 31 1972 in the
for Charlottesville
R. H. Lawrence
REGISTRAR
(ar)

No. 340717
Registry Division of Norfolk (No. 37)
I CERTIFY that this instrument is registered as of
9 46 A.M.
Registry Office at Simcoe, Ontario. AUG 31 1972 In the
for North Walsingham
R. H. Lawrence
REGISTRAR
22 "6"

THIS AGREEMENT MADE AS OF THE 1st day of July, 1972

B E T W E E N:

CRAVEN OIL COMPANY LIMITED INC., a body corporate having its office at 1000 Century Plaza, Wichita, Kansas, U.S.A. 67202 and authorized to carry on business in the Province of Ontario

Hereinafter called the "ASSIGNOR"

OF THE FIRST PART

- and -

QUILLIAN, BOYCHUK & ASSOCIATES LIMITED, a company incorporated under the laws of the Province of Ontario, having its head office at 186 Wellington Street West, Chatham, Ontario

Hereinafter called the "ASSIGNEE"

OF THE SECOND PART

WITNESSETH as follows:

1. In consideration of other valuable consideration and the sum of Two ($2.00) Dollars lawful money of Canada, the Assignor does by these presents assign, transfer, set over and convey unto the Assignee the overriding royalties hereinafter set forth in the petroleum, natural gas and related petroleum substances which may be produced under the terms of those certain Oil and Gas Leases or Grants covering lands situate in the Townships of Charlotteville, and North Walsingham, County of Norfolk and Province of Ontario which said Leases or Grants are more particularly described in Exhibits "A" and "B" which are attached hereto. The overriding royalties herein conveyed are:

(a) Exhibit "A" Leases

One-sixteenth of eight eighths (1/16th of 8/8's) of the current market value of any and all crude oil, natural gas and/or related petroleum substances produced, saved and marketed from time to time and at all times from the lands covered by the Leases or Grants set out in Exhibit "A" hereto and/or to which the Assignor may be entitled pursuant to the

THE LAND TRANSFER TAX ACT
NO LAND TRANSFER TAX
BY REGISTRATION OF THIS TRANSFER
CONTROLLER OF REVENUE
ONTARIO

TRANSFER TAX
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ONTARIO
R. J. WALKER

terms and conditions of the said Leases or Grants including any extensions or renewals thereof. The overriding royalties herein conveyed shall not be subject to deductions or any expenses relating to operating, pipeline or transportation, compression, treating, processing and the like, provided however the said overriding royalties shall bear their proportionate share of all severance and production taxes.

(b) Exhibit "B" Leases

One -eightieth of eight eighths (1/80th of 8/8's) of the current market value of any and all crude oil, natural gas and/or related petroleum substances produced, saved and marketed from time to time and at all times from the lands covered by the Leases or Grants set out in Exhibit "B" hereto and/or to which the Assignor may be entitled pursuant to the terms and conditions of the said Leases or Grants including any extensions or renewals thereof. The overriding royalties herein conveyed shall not be subject to deductions or any expenses relating to operating,pipeline or transportation, compression, treating, processing and the like, provided however the said overriding royalties shall bear their proportionate share of all severance and production taxes.

2. This assignment of overriding royalties shall not be construed as obligating the Assignor, its successors or assigns to maintain in force the Oil and Gas Leases described in Exhibits "A" & "B" hereto by the payment of rentals, the drilling of wells or otherwise nor to drill or operate upon the lands covered by the said Leases or Grants, it being understood that such overriding royalties shall only be payable out of production from the said lands and under the provisions of the said Leases or Grants when, as and if such production shall be taken from the lands pursuant to the provisions of the said Leases or Grants; provided however that the Assignor hereby covenants and agrees to indemnify and save harmless the Assignee from and against all and any claims, demands and liabilities of whatsoever kind and nature which may arise out of or result from or be directly attributable to any failure on the part of the Assignor to carry out the obligations of the Assignor in the said Leases or Grants or on the lands covered thereby or attributable to the operations of the Assignor on the said lands.

3. Insofar as the rights of the Assignee are concerned the Assignor shall have the right and power and sole and uncontrolled discretion to pool or combine the acreage covered by the said Leases or Grants or any portion thereof with other land, lease or leases in the immediate vicinity thereof. In such event, in lieu of the overriding royalty above specified the Assignee shall receive on production from a unit so pooled only such proportion of the overriding royalty stipulated under the terms of this Agreement as the amount of the above described acreage placed in the unit bears to the total acreage so pooled in the particular unit involved, subject to the rights of the Assignor to reduce proportionately the Assignee's overriding royalty as hereinafter provided. Oil or gas produced from any such unit and used in the operations thereof shall be excluded in calculating said overriding royalty. The above right and power to pool and unitize may be exercised with respect to petroleum , natural gas and related petroleum substances or any one or more of the said substances and may be exercised from time to time and before or after a well has been drilled or while a well is being drilled and any such unit may at any time be increased,

decreased and reformed as the Assignor may see fit. This paragraph shall be interpreted subject to the provisions of the Energy Act, R.S.O. 1970, Chapter 148 and the Ontario Energy Board Act, R.S.O. 1970, Chapter 312 together with any amendments thereto and any orders or regulations made pursuant to the provisions of the said Acts.

4. The Assignor covenants that it has full power and absolute authority to transfer, assign, set over and convey the overriding royalties herein set out to the Assignee, but the Assignor makes no warranty either expressed or implied as to the title to the lands covered by the said Leases, but the overriding royalties herein conveyed to the Assignee are fixed on the assumption that the said Oil and Gas Leases or Grants relate to and affect full and complete mineral leasehold rights in the said lands; should it be found therefore that the said Leases do not relate to, affect and cover full and complete leasehold rights in the lands described therein then and in that event the above mentioned overriding royalties shall be adjusted to apply only to the lands in which the leasehold rights are so outstanding.

5. The overriding royalties herein assigned shall extend to all renewals or extensions of the Leases or Grants described in Exhibits "A" and "B" hereto insofar as such renewals or extensions affect the lands presently covered by the said Leases or Grants and only in the event such renewals or extensions are executed within one year after the date of expiration of the said Leases or Grants.

6. The overriding royalties herein assigned in the amount provided by paragraph 1(a) hereof shall additionally extend to and apply to any new Leases acquired by the Assignor in the area as a result of the Assignee's services and in such event the Assignor shall upon the request of the Assignee forthwith provide and execute such further Assignments or other documents of conveyance as may be required under the circumstances at that time to vest in the Assignee the overriding royalty interest in such new Leases as provided under the terms of this Agreement.

7. This Agreement shall be binding upon the parties hereto

and their respective successors and assigns and shall be deemed to have come into force and effect on and from the 1st day of September, 1971, and is subject to all of the terms and conditions of a certain Agreement made between New Metalore Mining Company Limited and Beacon Resources Corporation dated September 10, 1971 together with amendments made thereto and is also subject to all of the terms and conditions of a certain operating agreement made between the Assignor and the Assignee dated September 1, 1971.

8. Notwithstanding anything else herein contained no change, assignment or subdivision of the ownership of the overriding royalty herein granted to the Assignee however accomplished shall be binding on the Assignor nor affect the validity of any payments made hereunder unless the Assignor shall have been furnished with a notice of such change or division in the ownership of the overriding royalty herein assigned together with a true copy of the Assignment or other instrument evidencing such change in ownership at least thirty days before a payment is due pursuant to the terms of this Agreement.

9. This Agreement shall at all times be interpreted in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals under the hands of their proper officers duly authorized in that behalf as of the day and date first above written.

CRAGEN OIL COMPANY LIMITED INC.

Per: _____
J. P. O'Connor, Jr., Vice President

ATTEST:

_____
Robert H. Brown
Secretary-Treasurer

QUILLIAN, BOYCHUK & ASSOCIATES LIMITED

Per: _____
PRESIDENT

_____
VICE PRESIDENT

TRANSFER TAX
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EXHIBIT "A"

TOWNSHIP OF CHARLOTTEVILLE, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

Registered Inst. No.	Date of Lease	Term (Years)	Lessor	Land Description	Acreage
323123	Oct. 27, 1969	10	George Anthony Hegmans and Elizabeth Hegmans, Anthony Hegmans	Part Lot 12, Conc. XI and Part Lot 13, Conc. XI, as more particularly described in Reg. Inst. #323123	115 286 287
334719	July 16, 1970	10	Remi Bacro and Jeanne Bacro	Part North Half Lot 11, Conc. X, as more particularly described in Reg. Inst. #334719	100 262
334720	Sept. 28, 1967	10	August J. Loncke and Elsie Loncke	Easterly 3/5 of the North quarter Lot 9, Conc. X (30 acres) and North Half of South Half of North Half of Lot 9, Conc. X (25 acres) as more particularly described in Reg. Inst. #334720	55 260
334721	Oct. 16, 1967	10	Mathew Potz and Annie Potz	Northwest part Lot 13, Conc. X (35 acres) and Northwest part Lot 14, Conc. X (106 acres), as more particularly described in Reg. Inst. #334721	141 264 265
334725	Sept. 15, 1970	10	(*)Julien Van Hove and Irene Van Hove, and Gustaf Verbeke	Southwest part Lot 11, Conc. X, (50 acres) and South part Lot 9, Conc. X (25 acres), as more particularly described in Reg. Inst. #334725	75 262 260
334724	Sept. 16, 1970	10	Roger E. Clarysse and Laura Clarysse	Part Lots 11 and 12, Conc. IX (83 acres), and part Lot 13, Conc. X (46 acres) as more particularly described in Reg. Inst. #334724.	129 238 239 264

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Registered Inst. No.	Date of Lease	Term (Years)		Lessor	Land Description	Acreage
334722	July 16, 1970	10		Walter J. Ghesquiere and Shirley Ghesquiere, Noel Ghesquiere and Madeline Ghesquiere	North half Lot 10, Conc. X (100 acres), and North half of South half Lot 11, Conc. X (50 acres)	150 261 262
334727	July 16, 1970	10		Andre Arthur Jules Debruyne and Patricia Lynne Debruyne	North half of broken Lot 10, Conc. XI (100 acres), and South half of the North half Lot 9, Conc. XI (50 acres) as more particularly described in Reg. Inst. #334727	150 284 283
334730	July 16, 1970	5		John Horvath and Elizabeth Horvath	Part Lot 13, Conc. IX, as more particularly described in Reg. Inst. #334730	111 240
310117	Sept. 22, 1967	10		John Horvath and Elizabeth Horvath	South half Lot 12, Conc. X (100 acres), Easterly Three quarters of the North half Lot 12, Conc. X (75 acres)	175 263
310202	Sept. 21, 1967	10		Frank Huyge	Northwest quarter Lot 11, Conc. IX (50 acres), Northeast Part of North half Lot 10, Conc. IX (30 acres), as more particularly described in Reg. Inst. #310202	80 238 237
305626	June 27, 1966	5	(*)	William Laverne Partridge	South half Lot 10, Conc. IX	100 237

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Registered Inst. No.	Date of Lease	Term (Years)		Lessor	Land Description	Acreage
314851	Feb. 21, 1968	3	(*)	The County of Norfolk	Norfolk County Forestry Plot #3, North Three quarters of West half Lot 8, Conc. IX.	75 235
					Norfolk County Forestry Plot #5, South half Lot 6, Conc. X	100 257
					Norfolk County Forestry Plot #14, Southwest 60 acres of North half Lot 10, Conc. IX all of which is more particularly described in Reg. Inst. #314851	60 237
322134	Aug. 21, 1969	3	(*)	Big Creek Region Conservation Authority	Southeast quarter Lot 11, Conc. IX (50 acres) as more particularly described in Reg. Inst. #322134	50 238
335932	Nov. 23, 1971	1		Willhue Land Corporation Ltd.	North Half of Lot 6, Conc. X (100 acres) as more particularly described in Reg. Inst. #335932	100 257
335589	Sept. 27, 1971	10		Morley H. Carson	South half of the South half of Lot 7, Conc. X as more particularly described in Reg. Inst. #335589	50 258
338343	Apr. 10, 1972	1		Joseph McClure Margaret McClure	North half Lot 9, Conc. IX and the North-west part of lot 10, Conc. IX and the South part of Lot 9, Conc. X as more particularly described in Reg. Inst. #338343	236 118 237 260
338128	March 6, 1972	10		Robert DeBock	All of Lot 8, Conc. XII and all of Lot 9, Conc. XII	45 297 298

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Registered Inst. No.	Date of Lease	Term (Years)	Lessor	Land Description	Acreage
337935	Feb. 3, 1972	10	Robert DeBock	East half of the North half of Lot 8, Conc. XI, lying North of Bostwick Road as more particularly described in Reg. Inst. #282370 and the North one-quarter of Lot 9, Conc. XI	94 282 283
337001	Jan. 31, 1972	1	Milton Smith Anna Mary Smith	Part of the North half of Lot 6, Conc. X as more particularly described in Reg. Inst. #337001	1.6 257

* *

TOWNSHIP OF NORTH WALSINGHAM, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

337934	Jan. 20, 1972	3	Robert William Christie Thomas D'Arcy Morris Robert Stanley Ball	North half of the East half and the South half of Lot 22, Conc. VII	150 22 E

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(*) Partial Assignment Lease

EXHIBIT "B"

TOWNSHIP OF CHARLOTTEVILLE, COUNTY OF NORFOLK

Reg. Inst. No.	Date of Lease	Lessor	Land Description
248706	April 25, 1955	Herbert C. Chanda and Dorothy Chanda	South half of Lot 5, Conc. X 256

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R. J. WALKER

Part Lease

This is Exhibit "N" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

THIS AGREEMENT MADE AS OF THE 17th day of February, 1977.

B E T W E E N:

CRAVEN OIL COMPANY LIMITED INC., a body corporate having its office at 711 One Energy Square, Dallas, Texas U.S.A., 75206 and authorized to carry on business in the Province of

Hereinafter called the "ASSIGNOR"

OF THE FIRST PART

-and-

GAISWINKLER ENTERPRISES LIMITED, a company incorporated under the laws of the Province of Ontario, having its head office at 286 King Street West, Chatham, Ontario

Hereinafter called the "ASSIGNEE"

OF THE SECOND PART

WITNESSETH as follows:

1. In consideration of other valuable consideration and the sum of Two ($2.00) Dollars lawful money of Canada, the Assignor does by these presents assign, transfer, set over and convey unto the Assignee the overriding royalties hereinafter set forth in the petroleum, natural gas and related petroleum substances which may be produced under the terms of those certain Oil and Gas Leases or Grants covering lands situated in Township of Delhi in the Regional Municipality of Haldimand-Norfolk, (formerly in the Township of Charlotteville, in the County of Norfolk), the Township of Norfolk in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of North Walsingham, in the County of Norfolk), in the Township of Norfolk in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of South Walsingham, in the County of Norfolk), and in the City of Nanticoke, in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of Woodhouse in the County of Norfolk)in the Province of Ontario, which said leases or grants are more particularly described in Exhibit "A" attached hereto. The overriding royalties herein conveyed are:

One-sixteenth of eight-eighths (1/16 x 8/8) of the current market value of any and all crude oil, natural gas and/or related petroleum substances produced, saved and marketed from time to time and at all times from the lands covered by the leases or grants set out in Exhibit "A" hereto and/or to which the Assignor may be entitled pursuant to the terms and conditions of the said leases or grants including any extensions or renewals thereof. The overriding royalties herein conveyed shall not be subject to deductions or any expenses relating to

operating, pipeline or transportation, compression, treating, processing and the like, provided however the said overriding royalties shall bear their proportionate share of all severance and production taxes.

2. This assignment of overriding royalties shall not be construed as obligating the Assignor, its successors or assigns to maintain in force the Oil and Gas Leases described in Exhibit "A" hereto by the payment of rentals, the drilling of wells or otherwise nor to drill or operate upon the lands covered by the said leases or grants, it being understood that such overriding royalties shall only be payable out of production from the said lands and under the provisions of the said leases or grants when, and if such production shall be taken from the lands pursuant to the provisions of the said leases or grants; provided, however, that the Assignor hereby covenants and agrees to idemnify and save harmless the Assignee from and against all and any claims, demands and liabilities of whatsoever kind and nature which may arise out of or result from or be directly attributable to any failure on the part of the Assignor to carry out the obligations of the Assignor in the said leases or grants or on the lands covered thereby or attributable to the operations of the Assignor on the said lands.

3. Insofar as the rights of the Assignee are concerned, the Assignor shall have the right and power and sole and uncontrolled discretion to pool or combine the acreage covered by the said leases or grants or any portion thereof with other land, lease or leases in the immediate vicinity thereof. In such event, in lieu of the overriding royalty above specified, the Assignee shall receive on production from a unit so pooled only such proportion of the overriding royalty stipulated under the terms of this Agreement as the amount of the above described acreage placed in the unit bears to the total acreage so pooled in the particular unit involved, subject to the rights of the Assignor to reduce proportionately the Assignee's overriding royalty as hereinafter provided. Oil or gas produced from any such unit and used in the operations thereof shall be excluded in calculating said overriding royalty. The above right and power to pool and

unitize may be exercised with respect to petroleum, natural gas and related petroleum substances or any one or more of the said substances and may be exercised from time to time and before or after a well has been drilled or while a well is being drilled and any such unit may at any time be increased, decreased or reformed as the Assignor may see fit. This paragraph shall be interpreted subject to the provisions of the Energy Act, R.S.O. 1970, Chapter 148 and the Ontario Energy Board Act, R.S.O. 1970, Chapter 312 together with any amendments thereto and any orders or regulations made pursuant to the provisions of the said Acts.

4. The Assignor covenants that it has full power and absolute authority to transfer, assign, set over and convey the overriding royalties herein set out to the Assignee, but the Assignor makes no warranty, either expressed or implied, as to the title to the lands covered by the said leases, but the overriding royalties herein conveyed to the Assignee are fixed on the assumption that the said Oil and Gas Leases or Grants relate to and affect full and complete mineral leasehold rights in the said lands; should it be found therefore that the said leases do not relate to, affect and cover full and complete leasehold rights in the lands described therein then and in that event the above mentioned overriding royalties shall be adjusted to apply only to the lands in which the leasehold rights are so outstanding.

5. The overriding royalties herein assigned shall extend to all renewals or extensions of the leases or grants described in Exhibit "A" hereto insofar as such renewals or extensions affect the lands presently covered by the said leases or grants and only in the event such renewals or extensions are executed within one year after the date of expiration of the said leases or grants.

6. The overriding royalties herein assigned in the amount provided shall extend to and apply to any new leases acquired by the Assignor in the area as a result of the Assignee's services and in such event, the Assignor shall, upon request of the Assignee, forthwith provide and execute

such further assignments or other documents of conveyance as may be required under the circumstances at that time to vest in the Assignee the overriding royalty interest in such new leases as provided under the terms of this Agreement.

7. This Assignment of overriding royalty is made in accordance with the terms and conditions of that certain Operating Agreement dated September 1, 1971, between Craven Oil Company Limited, and Quillian Boychuk & Associates Limited, the name of which has been changed to Gaiswinkler Enterprises Limited.

8. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

9. Notwithstanding anything else herein contained, no change, assignment or subdivision of the ownership of the overriding royalty herein granted to the Assignee, however accomplished, shall be binding on the Assignor nor affect the validity of any payments made hereunder unless the Assignor shall have been furnished with a notice of such change or division in the ownership of the overriding royalty herein assigned together with a true copy of the assignment or other instrument evidencing such change in ownership at least thirty days before a payment is due pursuant to the terms of this Agreement.

10. This Agreement shall at all times be interpreted in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF, the parties hereto have hereunder affixed their corporate seals under the hands of their proper officers duly authorized in that behalf as of the day and date first above written. This Agreement shall come into force and effect from the date of first production of each individual lease.

ATTEST:

Richard B. Monson, Secretary/
Treasurer

CRAVEN OIL COMPANY LIMITED INC.

Per: Tom S. Schiller
Tom S. Schiller, Vice President

GAISWINKLER ENTERPRISES LIMITED

Per: Leo F. Gai
Leo Gaiswinkler, President

EXHIBIT "A"

TOWNSHIP OF CHARLOTTEVILLE, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR		DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1027	Michael Kurylyk and Louise Kurylyk		12-19-72	10	West Quarter of South Half of Lot 15, Concession IX	25	345216
CAN-1028	Harold Kozack and Linda Kozack		11-17-72	10	East Half of Southeast Quarter of Lot 15, Concession IX	23	345205
CAN-1029	Benediktas Cvirka and Vera Cvirka		12-4-72	10	East Half of Northeast Quarter of Lot 15, Concession X	25	345212
CAN-1030	Lenard Earls and Karon Earls		11-20-72	10	East Half of East three-quarters of South Half of Lot 16, Concession VIII	37.5	345207
CAN-1031	Jack Francis Smith and Norma Smith		11-28-72	5	West Half of East three-quarters of South Half of Lot 16, less one acre in the Southeast part, Concession VIII	37.5	345208
CAN-1032	Lloyd A. G. Shepherd and Irene Loretta Shepherd		11-18-72	10	Southwesterly part of Lot 14, Concession IX	18	345206
CAN-1033	Lawrence Armstrong and Elsa Armstrong		11-30-72	10	Southwest Quarter, less parts, of Lot 17, Concession VIII	47.5	345209
CAN-1034	V. June Bannister		12-1-72	10	Easterly 339.73 feet of South Half, North of Plan 613 of Lot 17, Concession IX	17	345210
CAN-1035	Louis Halas and Katharina Halas	(HBP)	12-9-72	3	Parts of Lot 23, Concession VII and Lots 23 and 22, Concession VIII	110	345214
CAN-1037	John Buch and Christian Buch	(HBP)	12-1-72	10	North Half of Lot 23, Concession VIII	99	345211
CAN-1038	Ted I. Krempa and Caroline S. Krempa	(HBP)	11-20-72	10	East three-quarters of North Half of Lot 21, Concession IX, and East Half of Lot 22 and West part of Lot 23, Concession X	100	344818
CAN-1039	John Engeneski and Helen Engeneski		11-24-72	5	East Half of West three-quarters and South Part of West Half of West three-quarters of Lot 24, Concession VI	145	344817

EXHIBIT "A"

TOWNSHIP OF CHARLOTTEVILLE, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1040	Kichler Farms Limited	11-21-72	5	Northeast Quarter of Lot 23 and the central Easterly part of Lot 24, Concession 7, and the central Southerly and central Westerly parts of Lot 23, Concession VIII	105	344816
CAN-1041	Willhue Land Corporation Limited (HBP)	11-24-72	3	Southeast Quarter Lot 22, West Half lying South of Kent Creek Lot 23, Concession IX, and Northeast part of Lot 24, Concession VIII	145	344815
CAN-1042	Karl Spohn and Eva Spohn (HBP)	12-4-72	5	Southeast Quarter Lot 20 and East Half of Southeast Quarter of Lot 19, Concession IX	75	345213
CAN-1131	Steve Szilock and Bertha Szilock	1-6-73	3	South part of Lot 14, Concession IX	100	345217
CAN-1143	Alexander Hudson and (HBP) Mildred Marie Hudson	12-13-73	3	East Half of the Southwest Quarter and Southwest Quarter of Lot 10, Concession VIII and Southwest Quarter of Lot 19, Concession VIII	125	350842
CAN-1144	Theo and Rita Toebast Alex and Lydia Imre	1-17-74	10	Part of the Northeast Quarter of Lot 17, Concession VIII and part of the East Half of Lot 18, Concession VIII	87	351382
CAN-1146	Charles W. Shepherd and Mary Madeline Shepherd	12-13-73	10	Northeast Quarter of Lot 16, Concession VII	50	350841
CAN-1147	Peter Henszel and Irene Henszel	12-14-73	3	Southeast Quarter of Lot 16, Concession VII and the Southwest Half of the Southwest Quarter of Lot 17 Concession VII	75	350843
CAN-1148	Mathias Rittgasser and Anna Rittgasser	12-18-73	3	East Half of the Southeast Quarter of Lot 16, Concession VII and the Southwest Quarter of Lot 16, Concession VII	75	350844
CAN-1149	James Murray Bowyer and (HBP) Volanda Martha Bowyer	1-29-74	10	Southwest Quarter of Lot 22, Concession VIII	50	350845

EXHIBIT "A"

TOWNSHIP OF CHARLOTTEVILLE, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1168	Clarence James Kicksee and Velma H. Kicksee	7-4-75	3	Part of Lot 19, Concession X	114	366296
CAN-1169	Raye James Kicksee and Victoria Jeanette Kicksee	7-4-75	3	Part of Lot 20, Concession X	60	366295
CAN-1170	Malo Farms Limited	6-26-75	5	Part of Lot 21 and the East Half of Lot 20, Concession X and parts of Lots 13 & 14, Concession VIII	245	366294
CAN-1171	Daniel Albert VanHerzele and Anita Marie VanHerzele	1-23-75	3	Part of the North Half of Lot 22, Concession IX	97	366293
CAN-1172	Frank and Mary Kalhok	1-22-75	3	Northeast Quarter of Lot 20 and the West Quarter of the North Half of Lot 21, Concession IX	75	366292
CAN-1173	Reinhold Schlacht and Hedwige Schlacht	2-23-76	10	Part of Lot 19, Concession VII	10	367966
CAN-1174	Lionel Small and Barbara Small	4-7-76	10	Part of the Northeast Quarter of Lot 19, Concession VII	1	367965
CAN-1175	Brown's Corner Community Hall	4-13-76	10	Part of the Southwest Quarter of Lot 19, Concession VII	1/2	367964
CAN-1176	Mike and Ollie Konak	4-13-76	3	Part of the Northeast Quarter of Lot 19, Concession VII	40	367974
CAN-1177	Fanny Jane Staib	4-1-76	2	Part of Lot 14, Concession IX and part of Lot 14, Concession X	41	367963
CAN-1178	Karel Groen and Katherine Groen	4-6-76	10	Part of Lot 7, Concession X	1/2	367962
CAN-1179	Clarence and Dorothy Ryerse	4-6-76	10	Part of Lot 7, Concession X	1/3	367961
CAN-1180	William N. Socholotuik and Barbara A. Socholotuik	4-7-76	10	Part of the North Half of the South Half of Lot 7, Concession X	1/2	367960

EXHIBIT "A"

TOWNSHIP OF CHARLOTTEVILLE, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1181	Lewis Iram Smith	4-2-76	10	West Half of the South Quarter of the North Half of Lot 6, Concession IX	13	367959
CAN-1182	Lenard Thompson and William and Leona Griggs	4-7-76	10	Part of Lot 1, Concession III	1/2	367958
CAN-1185	Gordon and Nancy Haskett	3-25-76	10	Part of the Northwest Quarter of Lot 24, Concession VI	2	367971
CAN-1186	Otto and Eva Koptik	4-23-76		South Half of the Southwest Quarter and the Southeast Quarter of Lot 23, Concession VII	75	367967
CAN-1187	Otto and Eva Koptik	3-23-76	5	Part of the West Half of Lot 24, Concession VII and part of the Northwest Quarter of Lot 24, Concession VI	78	367970
CAN-1190	Alex Julius Horvath and Margaret Katherine Horvath	4-1-76	10	Part of Lot 5, the North Quarter of Lot 6 and part of Lot 7, all in Concession IX	130	368577

EXHIBIT "A"

TOWNSHIP OF WOODHOUSE, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1026	Kichler Farms Limited	11-21-72	5	Part of Lots 16, 17 & 18, Gore Concession	165	344819
CAN-1130	Steve Szilock	1-6-73	3	Northwest Part of Lot 19 and Southwest Part of Lot 18, Gore Concession	100	345219

EXHIBIT "A"

TOWNSHIP OF NORTH WALSINGHAM, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1043	Michel Vandendriessche and Godelieve Vandendriessche	12-11-72	10	Northeast Quarter of Lot 3 and a Northwest part of Lot 4, Concession XI	115	344933
CAN-1044	Albert DeWaele, Jr. and Glenna DeWaele	12-8-72	10	Northeast Quarter of Lot 10, Concession XI, and Southeast Quarter of Lot 10, Concession XII	100	344932
CAN-1045	Raymond Gustaf Causyn and Elizabeth Georgette Causyn	12-13-72	10	North Half of Lot 9, Concession XI	104	344934
CAN-1046	Donald A. Loncke and Wilfreda L. Loncke	11-28-72	10	Southeast Quarter of Lot 11, Concession XI	50	344931
CAN-1047	John Dambrauskas and Alexandra Dambrauskas	11-23-72	10	South Half of Lot 9 and South Half of the North Half of Lot 9, Concession XII	150	344930
CAN-1048	Adiel G. Sprier and Maria G. Sprier	11-21-72	10	South Half of Lot 11, Concession XIII	100	344912
CAN-1049	Etienne Willaert and Paul Willaert	12-12-72	5	Northwest Quarter and the West Half of the Northeast Quarter of Lot 8, Concession VII	75	345224
CAN-1050	J. B. Saunders and Mary Saunders	12-14-72	5	Easterly 330 feet of South Half of East Half of Lot 11, and South Half of Lot 12, Concession VII	118	345225
CAN-1051	Marjorie Patricia Woolley and Harold Woolley	12-8-72	10	Part of East Half of Lot 11, Concession VII	85	345223
CAN-1052	Andre Van Tyghem and Monica Van Tyghem	2-1-73	5	West Half of Lot 8, Concession XII	100	344797
CAN-1053	Gilbert C. Vanderhaeghe and Arlene N. Vanderhaeghe	2-1-73	10	North Half of Lot 7, Concession XI	100	344796
CAN-1054	Lake Erie Tobacco Company, Limited	1-17-73	10	North Half of Lot 9, Concession XIII, and part of Lots 6, 7, 8, 9, 10 and 11, Concession XIV	1,084	344814

EXHIBIT "A"

TOWNSHIP OF NORTH WALSINGHAM, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1055	Robert Maxwell McDowell and Bernice McDowell	11-20-72	10	FIRST: North Half of North Half and South Half of Lot 12, Concession VIII; SECOND: North Half of North Half of Lot 13, Concession IX; and THIRD: Part Lot 11, all Lot 12, Concession IX and part South Half of Lot 12, Concession X	541	344767
CAN-1056	Rene R. Vanderhaeghe and Diane M. Vanderhaeghe	12-18-72	10	South Half of North Half and West Quarter of South Half of Lot 6, and West three-quarters of Lot 7, Concession VII	225	344794
CAN-1057	Irma Riviere, Gilbert Riviere and Celine Riviere	11-21-72	10	South Half of Lot 8, Concession IX	100	344769
CAN-1059	Konrad Tiki	12-5-72	10	South Half of Lot 21, Concession VII	100	344788
CAN-1060	Donald James Hogg and Anna Hogg	12-5-72	10	North Half of Lot 19, Concession VII, less the Northwest part	94	344787
CAN-1061	Blake Underhill and Doris Underhill	12-4-72	10	Part of Lot 7 and South Half of Northwest Quarter of Lot 8, Concession IX	40	344786
CAN-1062	Edward Broughton and Clara M. Broughton	11-21-72	10	Northeast Half of North Half of Lot 13, Concession X	50	344770
CAN-1063	Andre Roger Vanderhaeghe, Diane Delphine Vanderhaeghe, Jules Vanderhaeghe and Julia Vanderhaeghe	11-22-72	10	East Half of West 125 Acres and East 75 Acres of Lot 9, Concession X	137.5	344771
CAN-1064	Walter Defreyne and Suzanna Defreyne	11-22-72	10	East two-thirds of North Half of Lot 10, Concession IX, and South three-quarters of Lot 10, Concession X	217	344772
CAN-1065	Victor M. Rigole and Liliane Rigole	11-22-72	3	North Half of Lot 8, West part of Lot 9, and parts of Lots 10 and 11, Concession X, and part of South Half of Lot 10, Concession XI	258	344773
CAN-1066	Joseph C. Fekete and Anna Fekete	11-23-72	3	Part of Lot 11, Concession X	157	344774

EXHIBIT "A"

TOWNSHIP OF NORTH WALSINGHAM, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CANX-1067	John O. Slaght and Katharina Alena Slaght	1-12-76	10	North Half of Lot 17, Concession X	100	366299
CAN-1068	Michael Thodt and Martha Thodt	11-24-72	5	North Quarter of Lot 9, Concession VIII, and South Half of Lot 9, Concession IX	150	344777
CAN-1069	Donald Ray Gurdebeke and Leona M. Gurdebeke	12-7-72	5	North Half of South Half of Lot 24, Concession VIII	50	344790
CAN-1070	Rene Claes and Marie Theresa Claes	12-14-72	10	North Half of Lot 20, Concession VII	100	344793
CAN-1071	Clair Jamieson and Frances Jamieson	12-1-72	10	South Half of Lot 17, Concession X	100	344785
CAN-1072	Juliette DeWannemaeker	11-30-72	10	East Half of South Half of Lot 11, Concession VIII	50	344782
CAN-1073	Rudy Ozbach, Ilene Ozbach, Adam Ozbach and Anna Ozbach	11-30-72	10	North Half of South Half of North Half of Lot 12, Concession X	25	344781
CAN-1074	Varga Farms Limited	11-29-72	10	North Half of Lot 14 and North Half of Lot 15, Concession IX	200	345222
CAN-1075	Henry Vandommele and Dana Vandommele	11-28-72	10	South Half of South Half of Lot 17, Concession VIII	50	344780
CANX-1076	Oswald S. Vervaet and Elsa H. Vervaet	1-9-76	10	Northwest Quarter of Lot 21, Concession VIII and the Southwest Quarter of Lot 21, Concession IX	100	366298
CAN-1077	Grace Irene Fletcher	11-27-72	5	South Half of West Half, the Southeasterly part of the Southeast Quarter, and part of Northeast Quarter of Lot 13, Concession X	100	344778
CAN-1078	Frank DeDobbelaer and Shirley DeDobbelaer	12-6-72	10	Part of West Half of Lot 9, Concession X	35	344789

EXHIBIT "A"

TOWNSHIP OF NORTH WALSINGHAM, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1079	Stewart Wingrove and Lylamae McKenzie, as joint tenants	12-11-72	10	Part of Lot 15, Concession VII	42	344791
CAN-1080	Michael Weiss and Alice Weiss	12-13-72	10	West 75 Acres of South Half of Lot 20, Concession VII (a/d/a West three-quarters of South Half of Lot 20)	75	344792
CAN-1081	Robert Cyriel Coppens and Georgette Julianne Coppens	12-1-72	10	Part of South Half of Lot 10, Concession IX	100	344784
CAN-1082	Samuel W. Staley and Anna May Staley	11-21-72	10	North Quarter of Lot 7 and North Half of Northwest Quarter of Lot 8, Concession IX	75	345221
CAN-1083	Anthony Temmer and Maria Temmer, as joint tenants	11-30-72	10	North Half of Lot 13, Concession VII	100	344783
CAN-1110	Archibald Acorn and Mary Acorn	2-20-73	10	North Half of Lot 9, Concession VII	100	344951
CAN-1111	Gerard Vanderhaeghe and Marie VAnderhaeghe	2-26-73	3	East three-quarters of North Half of Lot 5, and North Quarter of Lot 6, Concession VII	125	344952
CAN-1113	Keith Woolley and Myrtle Woolley	2-16-73	10	Southwest Quarter of Lot 9, Concession VII	50	344813
CAN-1114	James Knack and Carol Knack	2-13-73	10	North Half and Southwest Quarter of Lot 10, Concession VII	150	344812
CAN-1115	Rose Holmes	12-19-72	5	North three-quarters of East Half of Lot 7, Concession X	75	344795
CAN-1116	Andrew R. Beernaert and Cecilia Beernaert	3-27-73	3	North Half of Lot 16, Concession X, and South Quarter of Lot 16, Concession XI	150	344953
CAN-1117	Celest Joseph Spriet and Rosalie M. Spriet	11-23-72	10	North Half of Lot 10, Concession XII, Less & Except Part 3 on a reference plan deposited in the Registry Office for the County of Norfolk, as No. R30	98	344918
[illegible]	Harold T. Mortier and Doris H. Mortier	11-23-72	10	Northeast part of Lot 7, and Northwest part of Lot 8, Concession XIII (33 acres in Lot 8)	108	344917

EXHIBIT "A"

TOWNSHIP OF NORTH WALSINGHAM, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1119	Charles H. Rigole and Donna E. Rigole	11-22-72	10	North Half of Lot 11, Concession XIII	100	344916
CAN-1120	Hyppolite Van Tyghem and Alice Van Tyghem	11-21-72	10	South Half of Lot 8, Concession XIII	100	344913
CAN-1127	Harvey C. Phillips and Marie Phillips	11-20-72	10	East Half of Lot 4, and part Lot 5, Concession XII	110	345220
CAN-1132	Stewart Wingrove	12-19-72	10	South Half of Lot 16, and part of South Half of Lot 17, Concession VII	148	345491
CAN-1133	George Sanders	1-12-73	10	South Half and part of North Half of Lot 7, Concession IX	140	345492
CAN-1134	Alfred E. Brearley and Helen M. Brearley	4-11-73	10	Southwest Quarter of Lot 17, Concession IX	50	345496
CAN-1183	Fred and Nancy Provoost	4-14-76	10	North Half of Lot 19, Concession VIII	100	367969
CAN-1184	Marijonas Grincevicius and Alexandra Grincevicius and Lan and Patricia Grincevicius	4-22-76	10	Northeast Quarter of Lot 21, Concession VIII	50	367968

EXHIBIT "A"

TOWNSHIP OF SOUTH WALSINGHAM, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1084	Lake Erie Tobacco Company Limited	1-17-73	10	All of Lot 5 and 6, Concession V	400	344809
CAN-1085	George Ervin Conklin and Margaret Alice Conklin	12-18-72	10	Southwest Quarter of Lot 11, Concession VI	50	345228
CAN-1086	Fred Soenen and Simonne Soenen	12-6-72	10	Southerly three-quarters of Lot 19 and part of Lot 20, Concession IV	180	344956
CAN-1087	Martin Coppens and Jean Coppens	2-1-73	10	North Half of Lot 5, North Half of Lot 4, and Southwest Quarter of Lot 4, Concession III	250	344803
CAN-1088	Harold Simpson and Marie Simpson	2-2-73	10	Southeast Quarter of Lot 8, Concession III	50	344804
CAN-1090	Melvin W. Robbins and Verna Robbins	2-6-73	10	Northwest Quarter and West Half of Northeast Quarter of Lot 11, Concession II	75	344806
CAN-1091	John H. Soenen and Hilda A. Soenen, Fred J. Soenen and Maryann Soenen	12-5-72	10	South Half of Lot 17, Concession V	100	344955
CAN-1092	Peter Edward Hildebrand and Wilma Ruth Hildebrand	1-17-73	10	East Half of Lot 2, Concession B	71	344802
CAN-1093	John Peter Reimer and Helen Reimer	1-15-73	10	East Half of Lot 10, Concession II	100	344801
CAN-1094	Eurwell Ross Lounsbury and Margaret Elizabeth Lounsbury	1-11-73	10	East Half of Lot 9, Concession II	100	344800
CAN-1095	James Francis Armstrong and Mary Irene Armstrong	1-10-73	10	All Lot 7, lying East of Big Creek, and West Half of Lot 8, Concession II	250	344799
CAN-1096	Albert DeWaele, Jr. and Glenna M. DeWaele	1-9-73	10	All Lot 4, Concession IV	200	344766

EXHIBIT "A"

TOWNSHIP OF SOUTH WALSINGHAM , COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1097	Gerald Ross Armstrong and Joyce Beth Armstrong	1-9-73	10	North four-fifths of East Quarter of South Half of Lot 12, Concession II	20	344765
CAN-1098	Mike Schweder and Margit Schweder	1-9-73	10	North Half of Lot 11, Concession I, and South Half of Lot 11, Concession II	200	344764
CAN-1099	Hilaire Casier and Marie Delephina Casier	1-8-73	10	All Lot 7, Concession IV	200	344763
CAN-1100	Harry Becker	1-8-73	10	ALL Lot 7, Concession III, lying West and North of Big Creek	120	344762
CAN-1101	Robert Pype and Madeleine Pype	1-5-73	10	West Half of Lot 9, Concession II	98	344761
CAN-1102	Roger Gerard Beernaert and Elixabeth Marie Beernaert	1-4-73	5	North Half of Lot 6, Concession III, East Half of Lot 6, Concession IV, and parts of Lots 7 and 8, Concession V	275	344760
CAN-1103	Barney Juszku and Margaret Juszku	1-4-73	5	East Half of Lot 9, Concession III	98	344759
CAN-1104	Stewart Wingrove and Daniel Whitfield Wingrove	12-6-72	10	North Half of North Half of Lot 19, Concession VI	50	344758
CAN-1105	Anthony Temmer and Maria Temmer, as joint tenants	11-30-72	10	North Half of Lot 13, Concession VI	100	344757
CAN-1106	Jerome DeMaere and Gerarda DeMaere	11-30-72	10	North Half of Northeast Quarter of Lot 18, North Quarter of Lot 19, and North Half of Lot 20, Concession IV	175	344954
CAN-1107	Andre Verbrugge and Elizabeth Verbrugge, Steve Van Quaethem and Nelly Van Quaethem	12-7-72	10	North Half of Southeast Quarter and parts of South Half Lot 20 and South Half of Lot 21, Concession IV, and parts of Lot 22, Concession III	150	344957
CAN-1108	Harold Woolley and Marjorie Patricia Woolley	12-8-72	10	North Quarter of Lot 10, Concession VI	50	345226

EXHIBIT "A"

TOWNSHIP OF SOUTH WALSINGHAM, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1109	Donald Ross Dedrick and Helen Doreen Dedrick	12-12-72	10	Southeast Quarter of Lot 8 and Southeast Quarter of Lot 11 Concession 6	100	345227
CAN-1121	John Thum and Katalen Thum	2-27-73	10	West Half of Lot 10, Concession II	100	344961
CAN-1123	Keith Woolley and Myrtle Woolley	2-14-73	10	South Half of North Half of Lot 10, Concession VI	50	344808
CAN-1124	Charles Elam Moore and Doris Edna Moore	2-13-73	10	West Half of Lot 10, Concession III	100	344807
CAN-1125	Barry David Shepherd and Judith Lillian Shepherd	2-12-73	10	West Part of North Half of Lot 12, ConcessionII	21	344959
CAN-1126	Gordon Arthur Pickersgill and Marion Pickersgill	1-18-73	5	Part of Lot 7, Part Lot 8, and East Half of Lot 10, Concession III	115	344958
CAN-1135	Emilienne Cobb, Camiel Terrebroodt and Josephine Terrebroodt	12-6-72	10	Southeast Quarter of Lot 17, South Half of Lot 18, and South Half of Northeast Quarter of Lot 18, Concession IV	175	345497
CAN-1136	Gerard Vanderhaeghe and Marie Vandernaeghe	2-26-73	10	North Part of Lot 7, Concession VI	86	345498
CAN-1141	George Roger Madou and Edna Godlieve Madou	3-22-76	2	Northeast Quarter of Lot 8, and North Half of Lot 9, Concession VI	150	368578
CAN-1150	Hazel V. Smith	5-15-73	10	West Quarter of the South Half of Lot 16, Concession II	25	350826
CAN-1151	Leslie and Mary Wingrove	5-16-73	10	Northeast Quarter of Lot 19, Concession III and the North Half of Lot 20, Concession III	150	350827
CAN-1152	Charles E. and Doris Edna Moore	5-16-73	10	North Half of the Southwest Quarter of Lot 10, Concession IV	25	350828

EXHIBIT "A"

TOWNSHIP OF SOUTH WALSINGHAM, COUNTY OF NORFOLK, PROVINCE OF ONTARIO

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CAN-1153	Wilbert and Elsie Smith	5-17-73	10	East Half of Lot 21, Concession III	100	350829
CAN-1154	Winston E. Hazen and Lilly Hazen	5-18-73	10	Northeast Quarter of Lot 10, Concession IV and the West Half of Lot 10, Concession V	150	350830
CAN-1155	Gordon Earl Quick and Sadie A. Quick	5-29-73	10	North Half of Lot 18, Concession III	100	350831
CAN-1158	Harvey John Winkworth and Frances Louise Winkworth	6-6-73	10	Part of the East Half of Lot 10, Concession V	17-1/2	350834
CAN-1159	Joseph Dern and Frances Dern	6-6-73	3	North Half of the North Half of Lot 13, Concession III and the Northwest Quarter of Lot 14, Concession III and the South 50 Acres of the West Half of Lot 14, Concession IV and the Northeast Quarter of Lot 14, Concession III	180	350835
CAN-1160	Cleo Milburn Raymond and Madeline Raymond	6-12-73	10	North Half of the South Half of Lot 13, Concession III	25	350836
CAN-1161	Jacob and Sarah Wiens	6-13-73	10	Southwest Quarter of Lot 13, Concession III	50	350837
CAN-1163	Estate of Mary Elma Myke	6-14-73	10	Southeast Quarter of Lot 13, Concession III	50	350838
CAN-1164	Frank Anthony Van Dermeersch Mary Louise Van Dermeersch	7-4-73	3	North Half of Lot 12, Concession IV	100	350840
CAN-1189	Robert K. DeMeyere and Agnes M. DeMeyere	8-20-74	10	Parts of Lot 10 and Lot 11, Concession V	135	368577

376289

DATED: February 7, 1977

77 JUL -4 10 00

CRAVEN OIL COMPANY LIMITED
INC.

376289

No.
Land Registry Division of Norfolk (No. 37)
I CERTIFY that this instrument is registered as of
10 A.M.
JUL - 4 1977
in the
Land Registry Office
at Simcoe,
Ontario.
K. B. Kenny
REGISTRAR

and

[illegible]
LIMITED

: : : : : : : : : : : : : : : : : :

A S S I G N M E N T

: : : : : : : : : : : : : : : : : :

Duplicate

[illegible]

MYERS & WOODS
BARRISTERS, ETC.
42 E. MARKET ST.
CHATHAM, Ontario

Chas. Y. Wells, Swabs & Widdess

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Page

This is Exhibit "O" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

399287

17

THIS AGREEMENT made this 28th day of May, 1980

B E T W E E N:

CRAVEN OIL COMPANY LIMITED INC., a body corporate having its head office at 711 One Energy Square, Dallas, Texas, U.S.A., 75206 and authorized to carry on business in the Province of Ontario

Hereinafter called the ASSIGNOR

OF THE FIRST PART:

- and -

GAISWINKLER ENTERPRISES LIMITED, a company incorporated under the laws of the Province of Ontario, having its head office at 375 Grand Avenue West, Chatham, Ontario

Hereinafter called the ASSIGNEE

OF THE SECOND PART:

WITNESSETH as follows:

1. In consideration of other valuable consideration and the sum of TWO DOLLARS ($2.00) of lawful money of Canada, the Assignor does by these presents assign, transfer, set over and convey unto the Assignee the over-riding royalties hereinafter set forth in the petroleum, natural gas and related petroleum substances which may be produced under the terms of those certain oil and gas leases or grants covering lands situated in the Township of Norfolk, in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of Middleton, in the County of Norfolk); in the Township of Norfolk, in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of North Walsingham, in the County of Norfolk); in the Township of Norfolk, in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of South Walsingham, in the County of Norfolk); in the Township of Delhi, in the Regional Municipality of Haldimand-Norfolk (formerly in the Townships of Windham and Charlotteville, both in the County of Norfolk) in the Province of Ontario, which said leases or grants are more particularly described in Schedule "A" attached hereto. The overriding royalties herein conveyed are:

One-sixteenth of eight-eights (1/16 of 8/8) of the current market value of any and all crude oil, natural gas and/or related petroleum substances produced, saved and marketed from time to time and at all times from the lands covered by the leases or grants set out in Schedule "A" hereto and/or to which the Assignor may be entitled pursuant to the terms and conditions of the said leases or grants including any extensions or renewals thereof. The overriding royalties

herein conveyed shall not be subject to deductions or any expenses relating to operating, pipeline or transportation, compression, treating, processing and the like, provided however the said overriding royalties shall bear their proportionate share of all severance and production taxes.

2. This assignment of overriding royalties shall not be construed as obligating the Assignor, its successors or assigns to maintain in force the Oil and Gas Leases described in Schedule "A" hereto by the payment of rentals, the drilling of wells or otherwise nor to drill or operate upon the lands covered by the said leases or grants, it being understood that such overriding royalties shall only be payable out of production from the said lands and under the provisions of the said leases or grants when, and if such production shall be taken from the lands pursuant to the provisions of the said leases or grants; provided, however, that the Assignor hereby covenants and agrees to indemnify and save harmless the Assignee from and against all and any claims, demands and liabilities of whatsoever kind and nature which may arise out of or result from or be directly attributable to any failure on the part of the Assignor to carry out the obligations of the Assignor in the said leases or grants or on the lands covered thereby or attributable to the operations of the Assignor on the said lands.

3. Insofar as the rights of the Assignee are concerned, the Assignor shall have the right and power and sole and uncontrolled discretion to pool or combine the acreage covered by the said leases or grants or any portion thereof with other land, lease or leases in the immediate vicinity thereof. In such event, in lieu of the overriding royalty above specified, the Assignee shall receive on production from a unit so pooled only such proportion of the overriding royalty stipulated under the terms of this Agreement as the amount of the above described acreage placed in the unit bears to the total acreage so pooled in the particular unit involved, subject to the rights of the Assignor to reduce proportionately the Assignee's overriding royalty as hereinafter provided. Oil or gas produced from any such unit and used in the operations thereof shall be excluded in calculating said overriding royalty. The above right and power to pool and unitize may be exercised with respect to petroleum, natural gas and related petroleum substances or any one or more of the said substances and may be exercised from time to time and before or after a well

has been drilled or while a well is being drilled and any such unit may at any time be increased, decreased or reformed as the Assignor may see fit. This paragraph shall be interpreted subject to the provisions of the Energy Act, R.S.O. 1970, Chapter 148 and the Ontario Energy Board Act, R.S.O. 1970, Chapter 312 together with any amendments thereto and any orders or regulations made pursuant to the provisions of the said Acts.

4. The Assignor covenants that it has full power and absolute authority to transfer, assign, set over and convey the overriding royalties herein set out to the Assignee, but the Assignor makes no warranty, either expressed or implied, as to the title to the lands covered by the said leases, but the overriding royalties herein conveyed to the Assignee are fixed on the assumption that the said Oil and Gas Leases or Grants relate to and affect full and complete mineral leasehold rights in the said lands; should it be found therefore that the said leases do not relate to, affect and cover full and complete leasehold rights in the lands described therein then and in that event the above mentioned overriding royalties shall be adjusted to apply only to the lands in which the leasehold rights are so outstanding.

5. The overriding royalties herein assigned shall extend to all renewals or extensions of the leases or grants described in Schedule "A" hereto insofar as such renewals or extensions affect the lands presently covered by the said leases or grants and only in the event such renewals or extensions are executed within one year after the date of expiration of the said leases or grants.

6. The overriding royalties herein assigned in the amount provided shall extend to and apply to any new leases acquired by the Assignor in the area as a result of the Assignee's services and in such event, the Assignor shall, upon request of the Assignee, forthwith provide and execute such further assignments or other documents or conveyance as may be required under the circumstances at that time to vest in the Assignee the overriding royalty interest in such new leases as provided under the terms of this Agreement.

7. This Assignment of overriding royalty is made in accordance with the terms and conditions of that certain Operating Agreement dated September 1, 1971, between Craven Oil Company Limited, and Quillian Boychuk & Associates Limited, the name of which has been changed to Gaiswinkler Enterprises Limited.

8. This Agreement shall be binding upon the parties hereto and their

respective successors and assigns.

9. Notwithstanding anything else herein contained, no change, assignment, or subdivision of the ownership of the overriding royalty herein granted to the Assignee, however accomplished, shall be binding on the Assignor nor affect the validity of any payments made hereunder unless the Assignor shall have been furnished with a notice of such change or division in the ownership of the overriding royalty herein assigned together with a true copy of the assignment or other instrument evidencing such change in ownership at least thirty days before a payment is due pursuant to the terms of this Agreement.

10. This Agreement shall at all times be interpreted in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their corporate seals under the hands of their proper officers duly authorized in that behalf as of the day and date first above written. This Agreement shall come into force and effect from the date of first production of each individual lease.

CRAVEN OIL COMPANY LIMITED INC.

PER: D. Boychuk

VICE PRESIDENT

GAISWINKLER ENTERPRISES LIMITED

PER: Leo F. Mat

PRESIDENT

Limited

Refer to all instructions on Reverse Side

THE LAND TRANSFER TAX ACT, 1974
AFFIDAVIT OF RESIDENCE AND OF VALUE OF THE CONSIDERATION

IN THE MATTER OF THE CONVEYANCE OF *(insert brief description of land)* various parcels

BY *(print names of all transferors in full)* Craven Oil Company Limited Inc. (Assignor)

TO *(see instruction 1 and print names of all transferees in full)* Gaiswinkler Enterprises Limited (Assignee)

I, *(see instruction 2 and print name(s) in full)* F. Albert C. Madill

MAKE OATH AND SAY THAT:

1. I am *(place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent(s))*: *(see instruction 2)*
   - ☐ (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
   - ☐ (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
   - ☐ (c) A transferee named in the above-described conveyance;
   - ☒ (d) The ~~authorized agent or~~ solicitor acting in this transaction for Gaiswinkler Enterprises Limited *(insert name(s) of principal(s))*
     described in paragraph(s) (a), (b), (c) above; *(strike out references to inapplicable paragraphs)*
   - ☐ (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for ..... *(insert name(s) of corporation(s))*
     described in paragraph(s) (a), (b), (c) above; *(strike out references to inapplicable paragraphs)*
   - ☐ (f) A transferee described in paragraph ( ) *(insert only one of paragraph (a), (b) or (c) above, as applicable)* and am making this affidavit on my own behalf and on behalf of ..... *(insert name of spouse)*
     who is my spouse described in paragraph ( ): *(insert only one of paragraph (a), (b) or (c) above, as applicable)*

   and as such, I have personal knowledge of the facts herein deposed to.
2. I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses f and g of subsection 1 of section 1 of the Act. *(see instruction 3)*
3. The following persons to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed are non-resident persons within the meaning of the Act. *(see instruction 4)* none
4. THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:

(a) Monies paid or to be paid in cash	$ 2.00	
(b) Mortgages (i) Assumed *(show principal and interest to be credited against purchase price)*	$ nil	
(ii) Given back to vendor	$ nil	
(c) Property transferred in exchange *(detail below)*	$ nil	
(d) Securities transferred to the value of *(detail below)*	$ nil	
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	$ nil	
(f) Other valuable consideration subject to land transfer tax *(detail below)*	$ nil	
(g) VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX *(total of (a) to (f))*	$ 2.00	$ 2.00
(h) VALUE OF ALL CHATTELS — items of tangible personal property *(Retail Sales Tax is payable on the value of all chattels unless exempt under the provisions of The Retail Sales Tax Act, R.S.O. 1970, c. 415, as amended)*		$ nil
(i) Other consideration for transaction not included in (g) or (h) above		$ nil
(j) TOTAL CONSIDERATION		$ 2.00

ALL BLANKS MUST BE FILLED IN. INSERT "NIL" WHERE APPLICABLE.

5. If consideration is nominal, describe relationship between transferor and transferee and state purpose of conveyance. *(see instruction 5)* n/a
6. Other remarks and explanations, if necessary The attached conveyance is a grant, sale, transfer or assignment of a surface rights option but is not the exercise of a surface rights option as defined in Ontario Regulation 66/80, and exemption from land transfer tax is claimed pursuant to Section 2 of Ontario Regulation 66/80.

SWORN before me at the Town of Simcoe
in the Regional Municipality of Haldimand-Norfolk
this 4th day of July 19 80

A Commissioner for taking Affidavits, etc. L Harrison

F. Albert C. Madill
(signature(s))

Lynn Anne Harrison, a Commissioner for taking Affidavits, Province of Ontario, for Brimage, Tyrrell, Van Severen & Homeniuk, Barristers and Solicitors. Expires March 19, 1981.

PROPERTY INFORMATION RECORD

A. Describe nature of instrument Assignment of Oil & Gas Leases

B. (i) Address of property being conveyed *(if available)* not available

(ii) Assessment Roll # *(if available)* not available

C. Mailing address(es) for future Notices of Assessment under The Assessment Act for property being conveyed *(see instruction 6)*
Gaiswinkler Enterprises Limited

D. (i) Registration number for last conveyance of property being conveyed *(if available)* not available

(ii) Legal description of property conveyed: Same as in D.(i) above. Yes ☐ No ☐ Not Known ☒

E. Name(s) and address(es) of each transferee's solicitor BRIMAGE, TYRRELL, VAN SEVEREN & HOMENIUK
21 Norfolk Street North
Simcoe, Ontario N3Y 4L1

For Land Registry Office use only
REGISTRATION NO.
LAND REGISTRY OFFICE NO.
REGISTRATION DATE

SCHEDULE "A"

ATTACHED TO AND FORMING PART OF AN AGREEMENT

BETWEEN CRAVEN OIL COMPANY LIMITED, INC. AND GAISWINKLER ENTERPRISES LIMITED

Township of Norfolk, Regional Municipality of Haldimand-Norfolk, formerly Township of Middleton, County of Norfolk

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease No.
286009 on 30.1.63	15.1.63	Bertha Pasler	Southeast quarter of Lot 34, Con. 1, S.T.R.	50	CAN-3111
286008 on 30.1.63	15.1.63	Stephen Koprich, Catherine Koprich	South half of Lot 35, except part conveyed to Lutheran Church at Rhineland, Con. 1, S.T.R.	100	CAN-3112
291669 on 19.3.64	21.2.64	Bertha Pasler	Part of the Southeast quarter of Lot 36, Con. 1, S.T.R.; Southwest quarter of Lot 36 except a south-westerly part and except the West-erly part of the Southwest quarter, Con. 1, S.T.R. as in #195227	57	CAN-3113
291454 on 4.3.64	3.2.64	John Hantz, Nellie Hantz	East three-fifths of the Southwest quarter of Lot 37, Con. 1, S.T.R.; North half of the South half of Lot 35, Con. 2, S.T.R.	80	CAN-3114
291453 on 4.3.64	3.2.64	Edwin Voigt	East half of the South half of Lot 37, Con. 1, S.T.R.	50	CAN-3115
291769 on 26.3.64	31.1.64	Rose Cservid	Southwest quarter of Lot 15, Con. 2, S.T.R.	50	CAN-3117
291742 on 25.3.64	31.1.64	Frank Schuster	Southwest quarter of Lot 18, Con. 2, S.T.R.	50	CAN-3118

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease
291744 on 25.3.64	16.3.64	Anthony Bukta, Rose Bukta	South three-quarters of the South-west quarter and North one-third of the South three-quarters of the Southwest quarter of Lot 30, Con. 2, S.T.R.	50	CAN-3127
286080 on 6.2.63	18.1.63	Rosie Kapin	Northeast quarter of Lot 34, Con. 2, S.T.R.	50	CAN-3128
286840 on 9.4.63	15.3.63	John Antoszek	South half of the South half of Lot 35, except the Southerly 24 acres, Con. 2, S.T.R.	26	CAN-3129
296479 on 15.3.65	21.1.65	John Antoszek	North half and North quarter of the South half of Lot 36, Con. 2, S.T.R.	125	CAN-3130
285693 on 24.12.62	4.12.62	Jules Plancke, Euphrasie Plancke	North half of Lot 39, Con. 2, S.T.R.	100	CAN-3131
372946 on 10.2.77	16.12.76	James Vandekerckhove, Margaret Vandekerckhove	Northwest quarter of Lot 27, except South 10 acres of North-west quarter, Con. 3, S.T.R.	40	CAN-3133
291743 on 25.3.64	16.3.64	Anthony Bukta	North part of Lot 31, Con. 3, S.T.R., as in #183273	62	CAN-3134
286839 on 9.4.63	14.3.63	Frederick W. Langohr, Marie Langohr	Northerly 50 acres of Lot 35, Con. 3, S.T.R.	50	CAN-3136
				940	

TOWNSHIP OF NORFOLK, REGIONAL MUNICIPALITY OF HALDIMAND-NORFOLK, FORMERLY TOWNSHIP OF NORTH WALSINGHAM, COUNTY OF NORFOLK

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease No.
368694 on 9.7.76	17.6.76	Harvey Smith	Southwest quarter of Lot 23, Con. 7	50	CAN-3164
253512 on 29.6.56	31.5.56	Clarence G. Starling	Northeast quarter of Lot 23 and north quarter of north half of Lot 24, Con. 7	75	CAN-3166
253506 on 29.6.56	5.6.56	R. M. McDowell	North half south half of Lot 13, Con. 8; northeast quarter of Lot 14, Con. 8; northwest quarter of Lot 15, Con. 8	150	CAN-3172
366511 on 1.4.76	18.3.76	Vladas Miceika, Maria Miceika	Great south and east parts of south half of Lot 15, Con. 8, as in #308292	58	CAN-3173
365176 on 22.1.76	3.12.75	Maurice Van Acker, Leona Van Acker	North half of Lot 20, Con 8	100	CAN-3177
263186 on 9.10.58	3.9.58	Wilbert Marshall, Florence Marshall	North half of Lot 22, Con. 8	100	CAN-3180
362179 on 22.8.75	14.2.75	Wilbert Marshall, Florence Marshall	Southeast quarter of Lot 22, Con. 8	50	CAN-3181
364620 on 17.12.75	27.11.75	Leonard A. Grincevicius Patricia F. Grincevicius	Northeast quarter of Lot 23, Con. 8	50	CAN-3182
362178 on 22.8.75	15.7.75	Konrad Tickl	Great part of south half of Lot 15, Con. 9 as in #359280	98	CAN-3189
301122 on 17.2.66	2.2.66	George Armstrong	North quarter of Lot 10, Con. 10; south half of Lot 10, Con. 11 except part as in #194259	120	CAN-3196
340110 on 28.7.72	12.6.72	Clarence Devos Farms Limited	Part of west half of Lot 14, Con. 10 as in #319600	100	CAN-3197

Township of North Walsingham (cont'd.)

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease
301125 on 17.2.66	2.2.66	Gordon A. Boyd	Southeast quarter of Lot 16 and east half of southwest quarter of Lot 15, Con. 10	75	CAN-3198
301120 on 17.2.66	2.2.66	Ada Caroline Brownlee, Executrix of Jack W. Brownlee Estate	Southeast quarter of Lot 15, Con. 10	50	CAN-3199
339518 on 23.6.72	6.6.72	Gilbert De Paepe	Northeast quarter of Lot 15, Con. 10; east half of northwest quarter of Lot 15, Con. 10; southwest quarter of Lot 15, Con. 11	125	CAN-3200
301124 on 17.2.66	2.2.66	Simon Lewis Brearley, Edward Morley Brearley	South half of north half of Lot 18, Con. 10	50	CAN-3202
303259 on 27.6.66	2.2.66	Gordon Codling, Stella Codling	North half of north 100 acres of Lot 18, Con. 10	50	CAN-3203
302722 on 24.5.66	12.4.66	Endre Vaskeba, Mary Vaskeba	West half of Lot 2, Con. 11	100	CAN-3204
296040 on 9.2.65	14.1.65	Remi Goethals, Judith Goethals	Northwest quarter of Lot 15, Con. 11	50	CAN-3205
295915 on 28.1.65	13.1.65	Edgar De Sutter	Southeast quarter of Lot 15 and southwest quarter of Lot 16, Con. 11	100	CAN-3206
301123 on 17.2.66	2.2.66	John Nemeth, Helen Lilian Nemeth	Southeast quarter of Lot 3, Con. 12	50	CAN-3207
295913 on 28.1.65	14.1.65	Reinier Kersten, Cornelia Kersten	Lot 2, Block 4, Plan 25B, Langton; part of Lot 13, Con. 12; north half south half of Lot 13, Con. 12 except Lots on Plan 269; part of road allowance; part of north half south half of Lot 12, Con. 12 as in #281497	50	CAN-3208

[redacted]

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease	
285933 on 23.1.63	19.12.62	Edmund Roy Swain and Hannah Josephine Swain, Executors of Lorne Beals Swain Estate; Hannah Josephine Swain, Clair J. Swain and Susan Naomi Delight Swain, in personal capacity	South 50 acres of east one-third of Lot 16, Con. 12	50	CAN-3209	[redacted]
364723 on 22.12.75	30.9.75	Maurice Vanlerberghe, Irma Vanlerberghe	Part of Lot 24, Con. 12 south and east of established road as in #266177	25	CAN-3210	[redacted]
295928 on 29.1.65	15.1.65	Vendel Simonics, Theresa Simonics	West half of Lot 16, Con. 13	100	CAN-3211	[redacted]
296478 on 15.3.65	27.1.65	Mike Bozek, Stella Bozek	Westerly part of Lot 22, Con. 13 as in #249053	97	CAN-3212	
287043 on 24.4.63	20.3.63	Walter William Rogers, Isabella Myrtle Rogers	West half of Lot 23, Con. 13	100	CAN-3213	
286842 on 9.4.63	15.3.63	Harvey Albion Wilson	East half of Lot 23, Con. 13	100	CAN-3214	
286843 on 9.4.63	14.3.63	Stanley Pake, Mary Ada Pake	Great southerly part of east half of Lot 24, Con. 13 as in #236085	85	CAN-3215	
287971 on 19.6.63	6.5.63	John Major, Annie Major	West half of Lot 24, Con. 13	100	CAN-3216	[redacted]
295914 on 28.1.65	13.1.65	Harry Sanford Lambert	Northeasterly part of Lot 15 and part of northerly part of Lot 15, Con. 14 as in #266999	102	CAN-3217	
				2,410		[redacted]

Township of Norfolk, Regional Municipality of Haldimand-Norfolk, formerly Township of South Walsingham, County of Norfolk

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease No.
360728 on 20.6.75	27.5.75	Edwin Burton Rohrer	North part of Lot 20. Con. 1; North part of Lot 21, Con. 1 as in #311265	120	CAN-3226
360868 on 26.6.75	26.5.75	Gerald Chapman	Northeasterly part of Lot 21, Con. 1; North part of Lot 22, Con. 1 as in #238955	97	CAN-3227
360729 on 20.6.75	4.6.75	James Sinclair Lowden, Hazel Duncan Lowden	East 18 acres of the south three-quarters of Lot 20, Con. 2; south half of the west half of Lot 21, Con. 2	72	CAN-3230
360867 on 26.6.75	26.5.75	Edna Rose Schram	Part of Lot 22, Con. 2 as in #210648	60	CAN-3233
254373 on 21.9.56	26.6.56	Paul Adler, Eva Adler	North half of Lot 15, Con. 5	100	CAN-3236
254621 on 15.10.56	14.6.56	Leslie Bodo, Rose Bodo	Northeast quarter of Lot 14, Con. 6	50	CAN-3240
				499	

Township of Delhi, Regional Municipality of Haldimand-Norfolk, formerly Township of Windham, County of Norfolk

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease No.
unregistered	26.1.66	Maude Beatrice Louisa Hewitt	South part of the Northeast quarter of Lot 13, Con. 12 as in #228834 save and except parts as in #240547, 233824, 238951 and 238952	23	CAN-3140
301061 on 15.2.66	26.1.66	Lewis Everett Shaw	South half of the south half of Lot 13, Con. 11; Northeast part of Lot 13, Con. 12 as in #276551	75	CAN-3141
364298 on 3.12.75	29.9.75	Henry Krause, Julia Krause	Southerly part of Lot 22, Con. 13 as in #306974	45	CAN-3152
270356 on 30.3.60	16.3.60	Samuel C. Bagdon, Elizabeth M. Bagdon, Ignas Vilimas, Stefaniya Vilimas	Great part of the south half of Lot 6, Con. 14 as in #269937	79	CAN-3153
				222	

Township of Delhi, Regional Municipality of Haldimand-Norfolk, formerly Township of Charlotteville, County of Norfolk

258549 on 11.9.57	30.5.57	Edward Zak, Bronislaw Zak	Southwest quarter of Lot 2 and southeasterly part of Lot 1, Con. 3 as in #229614 and 252511	145	CAN-3014
298104 on 24.6.65	12.5.65	Gordon Bruce Forrest, Annie Ruth Forrest	Northerly part of Lot 21, Con. 4 as in #189088	50	CAN-3032
297830 on 7.6.65	10.5.65	Howard Leo Deming	South half of Lot 20, Con. 5	100	CAN-3039
362114 on 19.8.75	17.7.75	Bruce Edward Wilson	Greater part of north half of Lot 20, Con. 5 as in #343430	100	CAN-3040

Township of Charlotteville (cont'd.)

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease
345331 on 15.5.73	24.4.73	Harvey Segar Hutchinson, Irene Hutchinson, Margaret Leone Lopez Delgado and Stella Davis	Northerly part of northwest quarter of Lot 22, Con. 5 as in #298956	30	CAN-3041
344848 on 27.4.73	28.3.73	Leonidio Catarino, Maria Catarino	Part of Lot 23, Con. 5 except parts, as in #312516	96	CAN-3044
254371 on 21.9.56	28.8.56	Kenneth Carr	Southwest quarter of Lot 2, Con. 6	50	CAN-3045
342107 on 21.11.72	26.10.72	Clara Lillian Boughner	East half of Lot 15, Con. 6 except southeasterly part as in #242372	100	CAN-3047
346248 on 27.6.73	28.3.73	Nick Binder Jr., Mary Frances Binder	West half of Lot 15, Con. 6	100	CAN-3048
297828 on 7.6.65	12.5.65	Harry Chesquiere	Most northerly 1046.76 feet of Lot 23, Con. 6	50	CAN-3050
342155 on 24.11.72	1.11.72	Kirk Anthony Panter	West half of southeast quarter of Lot 14, Con. 7	25	CAN-3053
301063 on 15.2.66	28.1.66	Maggie J. Oliver	West part of south three-quarters of east half of Lot 17, Con. 7	25	CAN-3055
242486 on 15.2.54	2.5.53	Her Majesty the Queen	Part of west half of Lot 19, Con. 7 as in #264386	54.25	CAN-3056
301652 on 18.3.66	3.2.66	Harvey Segar Hutchinson, Thelma Hutchinson, Margaret Leone Hutchinson and Evelyn Toombs	West half of southeast quarter of Lot 20, Con. 7	25	CAN-3057
301121 on 17.2.66	1.2.66	Douglas Earl McKnight, Ralph McKnight	Northeast quarter of Lot 20, Con. 7	50	CAN-3058

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease
269740 on 24.2.60	11.2.60	Steve Stickle, Mary Stickle	Northeast quarter of Lot 21, Con. 7	50	CAN-3059
297827 on 7.6.65	19.5.65	Victor Clayton Cooke	Most westerly 295 feet in width from front to rear of south half of Lot 21, Con. 7	15	CAN-3060
297970 on 16.6.65	19.5.65	Albert Taylor, Simone Taylor	Part of Lot 21, Con. 7 as in #220750	40	CAN-3061
297829 on 7.6.65	12.5.65	Rupert Mills	North half of northwest quarter of Lot 21, Con. 7	25	CAN-3062
297624 on 27.5.65	10.5.65	Steve Stickle, Mary Stickle	South half of northwest quarter of Lot 21, Con. 7	25	CAN-3063
297623 on 27.5.65	7.5.65	Steve David, Betty David	All of Lot 22, Con. 7	200	CAN-3064
301691 on 21.3.66	1.2.66	Nicolas Belz	Part of Lot 19, Con. 8 as in #158179	15	CAN-3065
301062 on 15.2.66	27.1.66	William Courage Sr.	South ten acres of northwest quarter and south one-fifth of west quarter of northeast quarter of Lot 19, Con. 8	13	CAN-3066
340109 on 28.7.72	11.7.72	Mike Kochany	West thirty-five acres of south eighty-five acres of Lot 21, Con. 8	35	CAN-3067
340108 on 28.7.72	11.7.72	Viola Baguley	East half of northwest quarter of Lot 17, Con. 8	25	CAN-3068
340260 on 4.8.72	11.7.72	Albert Franz DeSmet, Jeanne Scheppers, Alfonsine DeSmet	Southeast quarter of Lot 17, Con. 8	50	CAN-3069

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease No.
362113 on 19.8.75	15.7.75	Lewis Hiram Smith	Part of Lot 2, Con. 9; part of Lot 5, Con. 9; parts of Lots 1 and 2, Con. 10 as in #286340	100	CAN-3070
364945 on 7.1.76	4.12.75	Lewis Hiram Smith	North fifty acres of Lot 7, Con. 9 and a strip 66 feet wide on south side as in #286341	53	CAN-3074
342154 on 24.11.72	3.11.72	Kenneth Archibald Connors, Sally Gail Connors	Northeasterly part of Lot 14, Con. 9 as in #304033	40	CAN-3076
286841 on 9.4.63	14.3.63	John Barner	West half of northeast quarter of Lot 15, Con. 9	25	CAN-3077
287021 on 23.4.63	8.4.63	Winnifred Evelyn Cruickshank	East twenty-five acres of north fifty acres of east half of Lot 15, Con. 9	25	CAN-3078
342108 on 21.11.72	26.10.72	Lila Learn	West fifty acres of north one hundred acres of Lot 15, Con. 9 except part as in #168240	48	CAN-3079
286845 on 9.4.63	14.3.63	Steve Bilinski	Northeast quarter of Lot 16, Con. 9	50	CAN-3080
286838 on 9.4.63	19.3.63	Walter Senko, Martha Senko	North eighty-five acres of west half of Lot 16, Con. 9	85	CAN-3081
361297 on 14.7.75	27.5.75	Edward Murray	Northerly part of Lot 4, Con. 10 as in #247341	60	CAN-3082
286844 on 9.4.63	21.3.63	James Whitney Casselton, Dorothy May Casselton	Parts of Lots 13 and 14, Con. 10 as in #198358	98	CAN-3087

Township of Charlotteville (cont'd.)

Reg. Inst. No.	Date of Lease	Lessor	Land Description	Acreage	Lease #
291223 on 13.2.64	1.4.63	Roger Deroo and Longin Maertens, Executors of Godelieve Deroo Estate and Roger Deroo, personally; Roger E. Clarysse and Laura Clarysse, Vendees	Central westerly part of Lot 13, Con. 10 as in #267307	49	CAN-3088
287041 on 24.4.63	20.3.63	Anna Hagerman, John Morse Hagerman Sr.	Part of Lot 1, Con. 11 as described thirdly in #277448	30	CAN-3089
359789 on 9.5.75	14.2.75	Odiel Masschaele, Simone Masschaele	Easterly part of Lot 4, Con. 12 as in #291487	75	CAN-3100
362729 on 16.9.75	14.2.75	Odiel Masschaele, Simone Masschaele	Westerly part of Lot 4, Con. 12 as in #306774	75	CAN-3101
				2306.25	
			TOTAL	6377.25	

399287

'80 JUL -4 10 28

DATED: May 28th , 1980

CRAVEN OIL COMPANY LIMITED INC.

- and -

GAISWINKLER ENTERPRISES LIMITED

A G R E E M E N T

BRIMAGE, TYRRELL, VAN SEVEREN & HOMENIUK
Barristers and Solicitors
21 Norfolk Street North
Simcoe, Ontario
N3Y 4L1

No. 399287
Land Registry Division of Norfolk (No. 37)
I CERTIFY that this instrument is registered as of
10:28 A.M.
JUL - 4 1980 in the
Land Registry Office at Simcoe, Ontario.
Norma J. Davidson
SR. DTY. LAND REGISTRAR

FILMED	
ABSTRACT INDEX	VARIOUS S. Wals N. Wals
CHECKED	Chas. Middleton Windham

PROPERTY OF THE
REGISTRY OFFICE
243.00 + 1.00 (Trip.)
EXEMPT-B.

Page 136

This is Exhibit "P" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation
Expires March 16, 2024

Province of Ontario

Document General

Form 4 — Land Registration Reform Act, 1984

D

FOR OFFICE USE ONLY

NUMBER 435301

CERTIFICATE OF REGISTRATION

'85 JUL 31 P3:19

NORFOLK
NO. 37
SIMCOE

Norma J. Davidson
LAND REGISTRAR

New Property Identifiers — Additional: See Schedule ☐

Executions — Additional: See Schedule ☐

(1) Registry ☒ Land Titles ☐ (2) Page 1 of 13 pages

(3) Property Identifier(s) Block Property — Additional: See Schedule ☒

(4) Nature of Document

Assignment of Oil and Gas Leases

(5) Consideration

--------Two---------- Dollars $ 2.00

(6) Description

Various lots and concessions, in the Township of Delhi, (formerly in the Township of Charlotteville, in the County of Norfolk), in the Township of Norfolk, (formerly the Townships of North Walsingham and South Walsingham, in the County of Norfolk), now in the Regional Municipality of Haldimand-Norfolk. Previously described in Registered Instrument Nos. 376289 and 399287.

(7) This Document Contains: (a) Redescription New Easement Plan/Sketch ☐ (b) Schedule for: Description ☒ Additional Parties ☐ Other ☒

(8) This Document provides as follows:

WHEREAS BY indentures registered in the Registry Office for the Registry Division of Norfolk (No. 37) as Nos. 376289 and 399287, Craven Oil Company Limited, Inc. conveyed to Gaiswinkler Enterprises Limited an overriding royalty in the petroleum, natural gas and related substances which may be produced under the terms of those certain Oil and Gas Leases or Grants described in the Schedules to these Indentures.
AND WHEREAS the rights by said Indentures granted are now being renewed by Craven Oil Company Limited, Inc. and re-assigned to Gaiswinkler Enterprises Limited.

Continued on Schedule ☒

(9) This Document relates to instrument number(s)

376289 and 399287

(10) Party(ies) (Set out Status or Interest)

Name(s) — Signature(s) — Date of Signature (Y M D)

CRAVEN OIL COMPANY LIMITED, INC. — Per: Brent Jordan, President — 1985 06 19

(Assignor)

(11) Address for Service 5445 La Sierra Drive, Suite 250, Lock Box 4, Dallas, Texas, U.S.A., 75231

(12) Party(ies) (Set out Status or Interest)

Name(s) — Signature(s) — Date of Signature (Y M D)

GAISWINKLER ENTERPRISES LIMITED — President — 1985 06 14

(Assignee)

(13) Address for Service R. R. # 3, P. O. Box 367, Chatham, Ontario N7M 5K5

(14) Municipal Address of Property

MULTIPLE

(15) Document Prepared by:

L. F. Gaiswinkler,
c/o Gaiswinkler Enterprises Limited
R. R. # 3
P. O. Box 367
Chatham, Ontario
N7M 5K5

FOR OFFICE USE ONLY

Fees and Tax	
Registration Fee	16 -
x Lots	156 -
x Leases	108
x Duplicate	1. -
Total	281 -

THIS AGREEMENT MADE AS OF THE 10th day of June, 1985.

B E T W E E N :

CRAVEN OIL COMPANY LIMITED, INC., A body corporate having its office at 5445 La Sierra Drive, Suite 250, Lock Box 4, Dallas, Texas, U.S.A., 75231 and authorized to carry on business in the Province of Ontario

Hereinafter called the "ASSIGNOR"

OF THE FIRST PART

-and-

GAISWINKLER ENTERPRISES LIMITED, a company incorporated under the laws of the Province of Ontario, having its head office at R. R. # 3, Chatham, Ontario

Hereinafter called the "ASSIGNEE"

OF THE SECOND PART

WITNESSETH as follows:

1. In consideration of other valuable consideration and the sum of Two ($2.00) Dollars lawful money of Canada, the Assignor does by these presents assign, transfer, set over and convey unto the Assignee the overriding royalties hereinafter set forth in the petroleum, natural gas and related petroleum substances which may be produced under the terms of those certain Oil and Gas Leases or Grants covering lands situated in Township of Delhi in the Regional Municipality of Haldimand-Norfolk, (formerly in the Township of Charlotteville, in the County of Norfolk), the Township of Norfolk in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of North Walsingham, in the County of Norfolk), in the Township of Norfolk in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of South Walsingham, in the County of Norfolk), and in the City of Nanticoke, in the Regional Municipality of Haldimand-Norfolk (formerly in the Township of Woodhouse in the County of Norfolk) in the Province of Ontario, which said leases or grants are more particularly described in Exhibit "A" attached hereto. The overriding royalties herein conveyed are:

One-sixteenth of eight-eighths (1/16 x 8/8) of the current market value of any and all crude oil, natural gas and/or related petroleum substances produced, saved and marketed from time to time and at all times from the lands covered by the leases or grants set out in Exhibit "A" hereto and/or to which the Assignor may be entitled pursuant to the terms and conditions of the said leases or grants including any extensions or renewals thereof. The overriding royalties conveyed herein are payable on or before the last day of the month following the month for which such overriding royalties are paid. The overriding royalties herein conveyed shall not be subject to deductions or any expenses relating to

operating, pipeline or transportation, compression, treating, processing and the like, provided however the said overriding royalties shall bear their proportionate share of all severance and production taxes.

2. This assignment of overriding royalties shall not be construed as obligating the Assignor, its successors or assigns to maintain in force the Oil and Gas Leases described in Exhibit "A" hereto by the payment of rentals, the drilling of wells or otherwise nor to drill or operate upon the lands covered by the said leases or grants, it being understood that such overriding royalties shall only be payable out of production from the said lands and under the provisions of the said leases or grants when, and if such production shall be taken from the lands pursuant to the provisions of the said leases or grants; provided, however, that the Assignor hereby covenants and agrees to idemnify and save harmless the Assignee from and against all and any claims, demands and liabilities of whatsoever kind and nature which may arise out of or result from or be directly attributable to any failure on the part of the Assignor to carry out the obligations of the Assignor in the said leases or grants or on the lands covered thereby or attributable to the operations of the Assignor on the said lands.

3. Insofar as the rights of the Assignee are concerned, the Assignor shall have the right and power and sole and uncontrolled discretion to pool or combine the acreage covered by the said leases or grants or any portion thereof with other land, lease or leases in the immediate vicinity thereof. In such event, in lieu of the overriding royalty above specified, the Assignee shall receive on production from a unit so pooled only such proportion of the overriding royalty stipulated under the terms of this Agreement as the amount of the above described acreage placed in the unit bears to the total acreage so pooled in the particular unit involved, subject to the rights of the Assignor to reduce proportionately the Assignee's overriding royalty as hereinafter provided. Oil or gas produced from any such unit and used in the operations thereof shall be excluded in calculating said overriding royalty. The above right and power to pool and

unitize may be exercised with respect to petroleum, natural gas and related petroleum substances or any one or more of the said substances and may be exercised from time to time and before or after a well has been drilled or while a well is being drilled and any such unit may at any time be increased, decreased or reformed as the Assignor may see fit. This paragraph shall be interpreted subject to the provisions of the Energy Act, R.S.O. 1970, Chapter 148 and the Ontario Energy Board Act, R.S.O. 1970, Chapter 312 together with any amendments thereto and any orders or regulations made pursuant to the provisions of the said Acts.

4. The Assignor covenants that it has full power and absolute authority to transfer, assign, set over and convey the overriding royalties herein set out to the Assignee, but the Assignor makes no warranty, either expressed or implied, as to the title to the lands covered by the said leases, but the overriding royalties herein conveyed to the Assignee are fixed on the assumption that the said Oil and Gas Leases or Grants relate to and affect full and complete mineral leasehold rights in the said lands; should it be found therefore that the said leases do not relate to, affect and cover full and complete leasehold rights in the lands described therein then and in that event the above mentioned overriding royalties shall be adjusted to apply only to the lands in which the leasehold rights are so outstanding.

5. The overriding royalties herein assigned shall extend to all renewals or extensions of the leases or grants described in Exhibit "A" hereto insofar as such renewals or extensions affect the lands presently covered by the said leases or grants and only in the event such renewals or extensions are executed within one year after the date of expiration of the said leases or grants.

6. The overriding royalties herein assigned in the amount provided shall extend to and apply to any new leases acquired by the Assignor in the area as a result of the Assignee's services and in such event, the Assignor shall, upon request of the Assignee, forthwith provide and execute

such further assignments or other documents of conveyance as may be required under the circumstances at that time to vest in the Assignee the overriding royalty interest in such new leases as provided under the terms of this Agreement.

7. This agreement of overriding royalty is made in accordance with the terms and conditions of that certain Operating Agreement dated September 1, 1971, between Craven Oil Company Limited, and Quillian, Boychuk & Associates Limited, the name of which has been changed to Gaiswinkler Enterprises Limited.

8. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

9. Notwithstanding anything else herein contained, no change, assignment or subdivision of the ownership of the overriding royalty herein granted to the Assignee, however accomplished, shall be binding on the Assignor nor affect the validity of any payments made hereunder unless the Assignor shall have been furnished with a notice of such change or division in the ownership of the overriding royalty herein assigned together with a true copy of the assignment or other instrument evidencing such change in ownership at least thirty days before a payment is due pursuant to the terms of this Agreement.

10. This Agreement shall at all times be interpreted in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF, the parties hereto have hereunder affixed their corporate seals under the hands of their proper officers duly authorized in that behalf as of the day and date first above written. This Agreement shall come into force and effect from the date of first production ofeach individual lease.

ATTEST:

CRAVEN OIL COMPANY LIMITED, INC.

Per: _____
Brent Jordan, President

GAISWINKLER ENTERPRISES LIMITED

Per: _____
Leo F. Gaiswinkler, President

...otions
...ide

Form 1

DYE & DURHAM CO. LIMITED
FORM NO. 800

The Land Transfer Tax Act, 1974

AFFIDAVIT OF RESIDENCE AND OF VALUE OF THE CONSIDERATION

IN THE MATTER OF THE CONVEYANCE OF *(insert brief description of land)* Various parcels of land in the Townships of Delhi and Norfolk in the Regional Municipality of Haldimand-Norfolk and more particularly described in Exhibit "A" attached hereto.

BY *(print names of all transferors in full)* CRAVEN OIL COMPANY LIMITED, INC. (Assignor)

TO *(see instruction 1 and print names of all transferees in full)* GAISWINKLER ENTERPRISES LIMITED (Assignee)

I, *(see instruction 2 and print name(s) in full)* EUGENIE GAISWINKLER

MAKE OATH AND SAY THAT:

1. I am *(place a clear mark within the square opposite that one of the following paragraphs that describes the capacity of the deponent(s)): (see instruction 2)*
   - ☐ (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
   - ☐ (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
   - ☐ (c) A transferee named in the above-described conveyance;
   - ☐ (d) The authorized agent or solicitor acting in this transaction for *(insert name(s) of principal(s))* ..... described in paragraph(s) (a), (b), (c) above; *(strike out references to inapplicable paragraphs)*
   - ☒ (e) The ~~President, Vice-President, Manager~~, Secretary, ~~Director, or Treasurer~~ authorized to act for *(insert name(s) of corporation(s))* GAISWINKLER ENTERPRISES LIMITED described in paragraph(s) (a), (b), (c) above. *(strike out references to inapplicable paragraphs)*
   - ☐ (f) A transferee described in paragraph ( ) *(insert only one of paragraph (a), (b) or (c) above, as applicable)* and am making this affidavit on my own behalf and on behalf of *(insert name of spouse)* ..... who is my spouse described in paragraph ( ). *(insert only one of paragraph (a), (b) or (c) above, as applicable)*

   and as such, I have personal knowledge of the facts herein deposed to.
2. I have read and considered the definitions of "non-resident corporation" and "non-resident person" set out respectively in clauses f and g of subsection 1 of section 1 of the Act. *(see instruction 3)*
3. The following persons to whom or in trust for whom the land conveyed in the above-described conveyance is being conveyed are non-resident persons within the meaning of the Act. *(see instruction 4)* NONE
4. **THE TOTAL CONSIDERATION FOR THIS TRANSACTION IS ALLOCATED AS FOLLOWS:**

(a) Monies paid or to be paid in cash	$ 2.00	
(b) Mortgages (i) Assumed *(show principal and interest to be credited against purchase price)*	$ NIL	
(ii) Given back to vendor	$ NIL	
(c) Property transferred in exchange *(detail below)*	$ NIL	
(d) Securities transferred to the value of *(detail below)*	$ NIL	
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	$ NIL	
(f) Other valuable consideration subject to land transfer tax *(detail below)*	$ NIL	
(g) VALUE OF LAND, BUILDING, FIXTURES AND GOODWILL SUBJECT TO LAND TRANSFER TAX *(TOTAL OF (a) to (f))*	$ 2.00	$ 2.00
(h) VALUE OF ALL CHATTELS – Items of tangible personal property *(Retail Sales Tax is payable on the value of all chattels unless exempt under the provisions of The Retail Sales Tax Act, R.S.O. 1970, c.415, as amended)*		$ NIL
(i) Other consideration for transaction not included in (g) or (h) above		$ NIL
(j) TOTAL CONSIDERATION		$ 2.00

ALL BLANKS MUST BE FILLED IN. INSERT "NIL" WHERE APPLICABLE.

5. If consideration is nominal, describe relationship between transferor and transferee and state purpose of conveyance. *(see instruction 5)* Assignor - Assignee, Oil and Gas Leases
6. Other remarks and explanations, if necessary The attached Assignment of Oil and Gas Leases is a conveyance of only the mineral rights to the lands and exemption from Land Transfer Tax is claimed as provided under Section 2 of Ontario Regulation 66/80

SWORN before me at the Township of Harwich
in the County of Kent
this 14th day of June 1985

Eugenie Gaiswinkler
(signature(s))
EUGENIE GAISWINKLER

A Commissioner for taking Affidavits, LEO F. GAISWINKLER, a Commissioner, etc., Province of Ontario, for Gaiswinkler Enterprises Limited and Reaioil Enterprises Limited. Expires December 7, 1985.

PROPERTY INFORMATION RECORD

A. Describe nature of instrument: Assignment of Oil & Gas Leases

B. (i) Address of property being conveyed *(if available)* Not Applicable

(ii) Assessment Roll No. *(if available)* Not Applicable

C. Mailing address(es) for future Notices of Assessment under The Assessment Act for property being conveyed *(see instruction 6)* Not Applicable

D. (i) Registration number for last conveyance of property being conveyed *(if available)* Not Applicable

(ii) Legal description of property conveyed: Same as in D.(i) above. Yes ☐ No ☐ Not Known ☒

E. Name(s) and address(es) of each transferee's solicitor Not Applicable

For Land Registry Office use only
REGISTRATION NO.
Land Registry Office No.
Registration Date

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CRAVEN 901-225	Elsie Jean Kozak	02-17-82	5	Northeast Quarter of Lot 19, Concession VII formerly Charlotteville, now Township of Delhi	26	411489
CRAVEN 901-248	Robert Joseph De Bock, et al	02-16-82	10	Part of Lots 8 and 9, Concession XI, and parts of Lots 7, 8 and 9, Concession XII formerly Charlotteville, now Township of Delhi	138	413539
CRAVEN 901-254	Benediktas Cvirka, et ux	05-21-82	10	East Half of the Northeast Quarter of Lot 15, Concession 10 formerly Charlotteville, now Township of Delhi	25	413534
CRAVEN 901-255	Lloyd Arthur Graydon Shepherd, et ux	08-03-82	10	Part of Lot 14, Concession IX formerly Charlotteville, now Township of Delhi	19	413541
CRAVEN 901-262	Vivian June Bannister	05-25-82	10	Part of Lot 17, Concession IX formerly Charlotteville, now Township of Delhi	17	413544
CRAVEN 901-263	Morley Carson	06-11-82	10	South Quarter of Lot 7, Concession 10 formerly Charlotteville, now Township of Delhi	50	413538
CRAVEN 902-107	David Joseph Cole, et ux	04-27-82	10	West 35 acres of the South 85 acres of Lot 21, Concession VIII formerly Charlotteville, now Township of Delhi	35	411490
CRAVEN 902-108	Gregory William Russel, et ux	07-21-82	10	Part of Lot 14, Concession IX formerly Charlotteville, now Township of Delhi	40	413545
CRAVEN 902-109	Charles Thomas Ryerse	07-22-82	10	Part of Lots 13 and 14, Concession 10 formerly Charlotteville, now Township of Delhi	60	413543
CRAVEN 902-110	John Barner	07-23-82	10	West Half of the Northeast Quarter of Lot 15, Concession IX formerly Charlotteville, now Township of Delhi	25	413535

EXHIBIT "A"

TOWNSHIP OF DELHI, REGIONAL MUNICIPALITY OF HALDIMAND-NORFOLK

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CRAVEN 902-111	Winnifred Evelyn Cruickshank	07-23-82	10	East Half of the Northeast Quarter of Lot 15, Concession IX formerly Charlotteville, now Township of Delhi	25	413537
CRAVEN 902-115	James Walter George Boughner, et ux	05-10-82	10	Part of the East Half of Lot 15, Concession VI formerly Charlotteville, now Township of Delhi	100	413546
CRAVEN 902-116	Lila Learn	05-10-82	10	Part of Lot 15, Concession IX formerly Charlotteville, now Township of Delhi	48	413536
CRAVEN 902-117	Viola Baguley, et vir	05-11-82	10	Part of the East Half of the Northwest Quarter of Lot 17, Concession VIII formerly Charlotteville, now Township of Delhi	24	413540

14.

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CRAVEN 901-211	Margit Schweder	05-10-82	10	North Half of Lot 11, Concession I and the South Half of Lot 11, Concession II formerly South Walsingham, now Township of Norfolk	200	411487
CRAVEN 901-212	Cleo Milburn Raymond, et ux	05-10-82	10	Part of the North Half of the South Half of the North Half of Lot 13, Concession III formerly South Walsingham, now Township of Norfolk	25	411484
CRAVEN 901-213	Donald Ross Dedrick, et ux	05-07-82	10	Southeast Quarter of Lot 8, Concession VI and the Southeast Quarter of Lot 11, Concession VI formerly South Walsingham, now Township of Norfolk	100	411488
CRAVEN 901-214	Jerome DeMaere, et ux	05-06-82	10	Northeast Quarter of the North Half of Lot 18, Concession IV, the North Half of the North Half of Lot 19, Concession IV and the North Half of Lot 20, Concession IV formerly South Walsingham, now Township of Norfolk	171	411486
CRAVEN 901-215	George Ervin Conklin, et ux	05-05-82	10	Southwest Quarter of Lot 11, Concession VI, save and except that part thereof designated as Part 1 on Reference Plan 37R-234 formerly South Walsingham, now Township of Norfolk	50	411485
CRAVEN 901-218	Anna Ozbach, et vir	04-29-82	10	North Half of the South Half of the North Half of Lot 12, Concession 10 formerly North Walsingham, now Township of Norfolk	25	411479
CRAVEN 901-219	John C. Dambrauskas, et ux	04-23-82	10	South Half of Lot 9, Concession XII and the South Half of the North Half of Lot 9, Concession XII formerly North Walsingham, now Township of Norfolk	150	411477
CRAVEN 901-220	Edward Broughton, et ux	04-22-82	10	Part of the Northeast Quarter of Lot 13, Concession 10 formerly North Walsingham, now Township of Norfolk	50	411480

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CRAVEN 901-221	Andre Roger Vanderhaeghe, et ux	04-22-82	10	Part of Lot 9, Concession 10, formerly North Walsingham, now Township of Norfolk	138	411476
CRAVEN 901-222	Jose Cordeiro, et ux	04-21-82	10	North Quarter of Lot 7, Concession IX and the North Half of the Northwest Quarter of Lot 8, Concession IX formerly North Walsingham, now Township of Norfolk	75	411478
CRAVEN 901-228	R & B Defreyne Farms Ltd.	04-24-82	10	Part of Lot 10, Concession 10 and parts of Lot 10, Concession IX Town of Simcoe	215	~~XXXXXX~~ 414649
CRAVEN 901-230	Marjorie Patricia Woolley, et vir	05-14-82	10	Part of the East Half of Lot 11, Concession VII formerly North Walsingham, now Township of Norfolk	80	414637
CRAVEN 901-231	Harvey Phillips Farms Ltd.	07-29-82	5	Part of the East Half of Lot 4, Concession VII and parts of the West Half of Lot 5, Concession VII formerly North Walsingham, now Township of Norfolk	110	414638
CRAVEN 901-232	Rene Albert Celestine Claes, et ux	07-28-82	10	North Half of Lot 20, Concession VII, save and except that part designated as Part 1 on Reference Plan 37R1419 formerly North Walsingham, now Township of Norfolk	99	414641
CRAVEN 901-233	Robert Joseph Pype, et ux	08-09-82	10	Part of the West Half of Lot 9, Concession II formerly South Walsingham, now Township of Norfolk	96	413764
CRAVEN 901-234	Joseph Devos & Sons Ltd.	08-06-82	10	Part of the North Half of Lot 11, Concession XIII, and the North Half of Lot 13, Concession XIII formerly North Walsingham, now Township of Norfolk	199	414642
CRAVEN 901-235	Clair Jamieson, et ux	08-17-82	5	South Half of Lot 17, Concession 10 formerly North Walsingham, now Township of Norfolk	100	414647
CRAVEN 901-236	Wilbert I. Smith, et ux	08-16-82	10	East Half of Lot 21, Concession III formerly South Walsingham, now Township of Norfolk	100	413556

[redacted]

[redacted]

[redacted]

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CRAVEN 901-237	Winston Eugene Hazen, et ux	08-16-82	10	Part of Lot 10, Concession IV and parts of Lots 10 and 11, Concession V formerly South Walsingham, now Township of Norfolk	155	413551
CRAVEN 901-238	Rendi Farms Limited	09-20-82	5	Part of the North Half of Lot 5, Concession VII, and the North Quarter of Lot 6, Concession VII formerly North Walsingham, now Township of Norfolk	125	414643
CRAVEN 901-239	Celest Joseph Spriet, et ux	09-27-82	10	North Half of Lot 10, Concession XII formerly North Walsingham, now Township of Norfolk	100	414644
CRAVEN 901-240	Ronald Vandendriessche, et ux	09-27-82	10	South Half of Lot 11, Concession XIII, save and except that part designated as Part 1 on Reference Plan 37R1451 formerly North Walsingham, now Township of Norfolk	100	414639
CRAVEN 901-241	Donald James Hogg, et ux	09-30-82	5	Part of the North Half of Lot 19, Concession VII formerly North Walsingham, now Township of Norfolk	94	414634
CRAVEN 901-242	Alice Weiss	10-07-82	10	West Three-Quarters of the South Half of Lot 20, Concession VII formerly North Walsingham, now Township of Norfolk	75	414640
CRAVEN 901-243	Gordon Arthur Pickersgill, et ux	09-03-82	5	Part of Lot 8, Concession III formerly South Walsingham, now Township of Norfolk	16	414631
CRAVEN 901-244	Elizabeth M. Lounsbury	09-08-82	10	East Half of Lot 9, Concession II formerly South Walsingham, now Township of Norfolk	100	414632
CRAVEN 901-245	Rendi Farms Limited	09-20-82	5	Part of the North Half of Lot 7, Concession VI formerly South Walsingham, now Towns;hip of Norfolk	86	414629

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CRAVEN 901-246	Harold Felix Kleiman, et al	09-30-82	10	Part of Lot 12, Concession II formerly South Walsingham, now Township of Norfolk	88	414630
CRAVEN 901-247	John Thum, et ux	10-12-82	5	West Half of Lot 10,Concession II formerly South Walsingham, now Township of Norfolk	100	414633
CRAVEN 901-249	Hazel Viola Smith	08-18-82	10	West Quarter of the South Half of Lot 15, Concession II formerly South Walsingham, now Township of Norfolk	25	413555
CRAVEN 901-250	James Francis Armstrong, et ux	08-23-82	10	Part of Lot 7, Concession II and the West Half of Lot 8, Concession II formerly South Walsingham, now Township of Norfolk	250	413550
CRAVEN 901-251	Reta Wolven, et al	08-24-82	10	Southeast Quarter of Lot 13,Concession III formerly South Walsingham, now Township of Norfolk	54	413557
CRAVEN 901-252	Martin Coppens, et ux	08-26-82	10	Southwest Quarter and the North Half of Lot 4, Concession III and the North Half of Lot 5, Concession III formerly South Walsingham, now Township of Norfolk	250	413564
CRAVEN 901-253	Barry David Shepherd, et ux	08-31-82	10	Part of Lot 12, Concession II formerly South Walsingham, now Township of Norfolk	21	413553
CRAVEN 901-258	Harold Woolley, et ux	05-14-82	10	North Quarter of Lot 10, Concession VI formerly South Walsingham, now Township of Norfolk	50	413547
CRAVEN 901-259	Willy Rene De Bruyn, et ux	05-19-82	10	North Half of Lot 6, Concession III, parts of Lot 6, Concession IV and parts of Lot 7, Concession V formerly South Walsingham, now Township of Norfolk	277	413554
CRAVEN 901-260	Gordon Arthur Pickersgill, et ux	05-20-82	5	East Half of Lot 10, Concession III and parts of Lots 7 and 8, Concession III formerly South Walsingham, now Township of Norfolk	115	413549

CRAVEN LEASE NO.	LESSOR	DATE OF LEASE	TERM (YEARS)	LAND DESCRIPTION	ACRES	REGISTERED INST. NO.
CRAVEN 901-261	Steve Van Quaethem, et ux	06-15-82	10	Part of Lot 22, Concession III, parts of Lot 20, Concession IV and the South Half of Lot 21, Concession IV formerly South Walsingham, now Township of Norfolk	150	413552
CRAVEN 902-112	Clair J. Swain, et al	08-05-82	10	Part of Lot 16, Concession XII and parts of Lot 17, Concession XII formerly North Walsingham, now Township of Norfolk	100	414645
CRAVEN 902-113	Harvey Albion Wilson, et ux	08-20-82	10	East Half of Lot 23, Concession XIII formerly North Walsingham, now Township of Norfolk	100	414636
CRAVEN 902-114	George Alfred Rogers	09-02-82	10	West Half of Lot 23, Concession XIII and the Northeast Quarter of Lot 23, Concession XII formerly North Walsingham, now Township of Norfolk	150	414646

This is Exhibit "Q" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

COURT OF APPEAL FOR ONTARIO

CITATION: Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc., 2019 ONCA 508
DATE: 20190619
DOCKET: C62925

Pepall, Lauwers and Huscroft JJ.A.

BETWEEN

Third Eye Capital Corporation

Applicant
(Respondent)

and

Ressources Dianor Inc. /Dianor Resources Inc.

Respondent
(Respondent)

and

2350614 Ontario Inc.

Interested Party
(Appellant)

Peter L. Roy and Sean Grayson, for the appellant 2350614 Ontario Inc.

Shara Roy and Nilou Nezhat, for the respondent Third Eye Capital Corporation

Stuart Brotman and Dylan Chochla, for the receiver of the respondent Ressources Dianor Inc./Dianor Resources Inc., Richter Advisory Group Inc.

Nicholas Kluge, for the monitor of Essar Steel Algoma Inc., Ernst & Young Inc.

Steven J. Weisz, for the intervener Insolvency Institute of Canada

Heard: September 17, 2018

On appeal from the order of Justice Frank J.C. Newbould of the Superior Court of Justice dated October 5, 2016, with reasons reported at 2016 ONSC 6086, 41 C.B.R. (6th) 320.

Pepall J.A.:

Introduction

[1] There are two issues that arise on this appeal. The first issue is simply stated: can a third party interest in land in the nature of a Gross Overriding Royalty ("GOR") be extinguished by a vesting order granted in a receivership proceeding? The second issue is procedural. Does the appeal period in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA") or the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 ("CJA") govern the appeal from the order of the motion judge in this case?

[2] These reasons relate to the second stage of the appeal from the decision of the motion judge. The first stage of the appeal was the subject matter of the first reasons released by this court: see *Third Eye Capital Corporation v. Ressources Dianor Inc./ Dianor Resources Inc*., 2018 ONCA 253, 141 O.R. (3d) 192 ("First Reasons"). As a number of questions remained unanswered, further submissions were required. These reasons resolve those questions.

Background

[3] The facts underlying this appeal may be briefly outlined.

[4] On August 20, 2015, the court appointed Richter Advisory Group Inc. ("the Receiver") as receiver of the assets, undertakings and properties of Dianor Resources Inc. ("Dianor"), an insolvent exploration company focused on the acquisition and exploitation of mining properties in Canada. The appointment was made pursuant to s. 243 of the BIA and s. 101 of the CJA, on the application of Dianor's secured lender, the respondent Third Eye Capital Corporation ("Third Eye") who was owed approximately $5.5 million.

[5] Dianor's main asset was a group of mining claims located in Ontario and Quebec. Its flagship project is located near Wawa, Ontario. Dianor originally entered into agreements with 3814793 Ontario Inc. ("381 Co.") to acquire certain mining claims. 381 Co. was a company controlled by John Leadbetter, the original prospector on Dianor's properties, and his wife, Paulette A. Mousseau-Leadbetter. The agreements provided for the payment of GORs for diamonds and other metals and minerals in favour of the appellant 2350614 Ontario Inc. ("235 Co."), another company controlled by John Leadbetter.[1] The

[1] The original agreement provided for the payment of the GORs to 381 Co. and Paulette A. Mousseau-Leadbetter. The motion judge noted that the record was silent on how 235 Co. came to be the holder of these royalty rights but given his conclusion, he determined that there was no need to resolve this issue: at para. 6.

mining claims were also subject to royalty rights for all minerals in favour of Essar Steel Algoma Inc. (“Algoma”). Notices of the agreements granting the GORs and the royalty rights were registered on title to both the surface rights and the mining claims. The GORs would not generate any return to the GOR holder in the absence of development of a producing mine. Investments of at least $32 million to determine feasibility, among other things, are required before there is potential for a producing mine.

[6] Dianor also obtained the surface rights to the property under an agreement with 381 Co. and Paulette A. Mousseau-Leadbetter. Payment was in part met by a vendor take-back mortgage in favour of 381 Co., Paulette A. Mousseau-Leadbetter, and 1584903 Ontario Ltd., another Leadbetter company. Subsequently, though not evident from the record that it was the mortgagee, 1778778 Ontario Inc. (“177 Co.”), another Leadbetter company, demanded payment under the mortgage and commenced power of sale proceedings. The notice of sale referred to the vendor take-back mortgage in favour of 381 Co., Paulette A. Mousseau-Leadbetter, and 1584903 Ontario Ltd. A transfer of the surface rights was then registered from 177 Co. to 235 Co. In the end result, in

addition to the GORs, 235 Co. purports to also own the surface rights associated with the mining claims of Dianor.[2]

[7] Dianor ceased operations in December 2012. The Receiver reported that Dianor's mining claims were not likely to generate any realization under a liquidation of the company's assets.

[8] On October 7, 2015, the motion judge sitting on the Commercial List, and who was supervising the receivership, made an order approving a sales process for the sale of Dianor's mining claims. The process generated two bids, both of which contained a condition that the GORs be terminated or impaired. One of the bidders was Third Eye. On December 11, 2015, the Receiver accepted Third Eye's bid conditional on obtaining court approval.

[9] The purchase price consisted of a $2 million credit bid, the assumption of certain liabilities, and $400,000 payable in cash, $250,000 of which was to be distributed to 235 Co. for its GORs and the remaining $150,000 to Algoma for its royalty rights. The agreement was conditional on extinguishment of the GORs and the royalty rights. It also provided that the closing was to occur within two days after the order approving the agreement and transaction and no later than August 31, 2016, provided the order was then not the subject of an appeal. The agreement also made time of the essence. Thus, the agreement

[2] The ownership of the surface rights is not in issue in this appeal.

contemplated a closing prior to the expiry of any appeal period, be it 10 days under the BIA or 30 days under the CJA. Of course, assuming leave to appeal was not required, a stay of proceedings could be obtained by simply serving a notice of appeal under the BIA (pursuant to s. 195 of the BIA) or by applying for a stay under r. 63.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[10] On August 9, 2016, the Receiver applied to the court for approval of the sale to Third Eye and, at the same time, sought a vesting order that purported to extinguish the GORs and Algoma's royalty rights as required by the agreement of purchase and sale. The agreement of purchase and sale, which included the proposed terms of the sale, and the draft sale approval and vesting order were included in the Receiver's motion record and served on all interested parties including 235 Co.

[11] The motion judge heard the motion on September 27, 2016. 235 Co. did not oppose the sale but asked that the property that was to be vested in Third Eye be subject to its GORs. All other interested parties including Algoma supported the proposed sale approval and vesting order.

[12] On October 5, 2016, the motion judge released his reasons. He held that the GORs did not amount to interests in land and that he had jurisdiction under the BIA and the CJA to order the property sold and on what terms: at para. 37. In any event, he saw "no reason in logic … why the jurisdiction would not be the

same whether the royalty rights were or were not an interest in land": at para. 40. He granted the sale approval and vesting order vesting the property in Third Eye and ordering that on payment of $250,000 and $150,000 to 235 Co. and Algoma respectively, their interests were extinguished. The figure of $250,000 was based on an expert valuation report and 235 Co.'s acknowledgement that this represented fair market value.[3]

[13] Although it had in its possession the terms of the agreement of purchase and sale including the closing provision, upon receipt of the motion judge's decision on October 5, 2016, 235 Co. did nothing. It did not file a notice of appeal which under s. 195 of the BIA would have entitled it to an automatic stay. Nor did it advise the other parties that it was planning to appeal the decision or bring a motion for a stay of the sale approval and vesting order in the event that it was not relying on the BIA appeal provisions.

[14] For its part, the Receiver immediately circulated a draft sale approval and vesting order for approval as to form and content to interested parties. A revised draft was circulated on October 19, 2016. The drafts contained only minor variations from the draft order included in the motion materials. In the

[3] Although in its materials filed on this appeal, 235 Co. stated that the motion judge erred in making this finding, in oral submissions before this court, Third Eye's counsel confirmed that this was the position taken by 235 Co.'s counsel before the motion judge, and 235 Co.'s appellate counsel, who was not counsel below, stated that this must have been the submission made by counsel for 235 Co. before the motion judge.

absence of any response from 235 Co., the Receiver was required to seek an appointment to settle the order. However, on October 26, 2016, 235 Co. approved the order as to form and content, having made no changes. The sale approval and vesting order was issued and entered on that same day and then circulated.

[15] On October 26, 2016, for the first time, 235 Co. advised counsel for the Receiver that “an appeal is under consideration” and asked the Receiver for a deferral of the cancellation of the registered interests. In two email exchanges, counsel for the Receiver responded that the transaction was scheduled to close that afternoon and 235 Co.’s counsel had already had ample time to get instructions regarding any appeal. Moreover, the Receiver stated that the appeal period “is what it is” but that the approval order was not stayed during the appeal period. Counsel for 235 Co. did not respond and took no further steps. The Receiver, on the demand of the purchaser Third Eye, closed the transaction later that same day in accordance with the terms of the agreement of purchase and sale. The mining claims of Dianor were assigned by Third Eye to 2540575 Ontario Inc. There is nothing in the record that discloses the relationship between Third Eye and the assignee. The Receiver was placed in funds by Third Eye, the sale approval and vesting order was registered on title and the GORs and the royalty interests were expunged from title. That same

day, the Receiver advised 235 Co. and Algoma that the transaction had closed and requested directions regarding the $250,000 and $150,000 payments.

[16] On November 3, 2016, 235 Co. served and filed a notice of appeal of the sale approval and vesting order. It did not seek any extension of time to appeal. 235 Co. filed its notice of appeal 29 days after the motion judge's October 5, 2016 decision and 8 days after the order was signed, issued and entered.

[17] Algoma's Monitor in its *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") proceedings received and disbursed the funds allocated to Algoma. The $250,000 allocated to 235 Co. are held in escrow by its law firm pending the resolution of this appeal.

Proceedings Before This Court

[18] On appeal, this court disagreed with the motion judge's determination that the GORs did not amount to interests in land: see First Reasons, at para. 9. However, due to an inadequate record, a number of questions remained to be answered and further submissions and argument were requested on the following issues:

> (1) Whether and under what circumstances and limitations a Superior Court judge has jurisdiction to extinguish a third party's interest in land, using a vesting order, under s. 100 of the CJA and s. 243 of the BIA, where s. 65.13(7) of the BIA; s. 36(6) of the CCAA; ss. 66(1.1) and 84.1 of the BIA; or s. 11.3 of the CCAA do not apply;

(2) If such jurisdiction does not exist, should this court order that the Land Title register be rectified to reflect 235 Co.'s ownership of the GORs or should some other remedy be granted; and

(3) What was the applicable time within which 235 Co. was required to appeal and/or seek a stay and did 235 Co.'s communication that it was considering an appeal affect the rights of the parties.

[19] The Insolvency Institute of Canada was granted intervener status. It describes itself as a non-profit, non-partisan and non-political organization comprised of Canada's leading insolvency and restructuring professionals.

A. Jurisdiction to Extinguish an Interest in Land Using a Vesting Order

(1) Positions of Parties

[20] The appellant 235 Co. initially took the position that no authority exists under s. 100 of the CJA, s. 243 of BIA, or the court's inherent jurisdiction to extinguish a real property interest that does not belong to the company in receivership. However, in oral argument, counsel conceded that the court did have jurisdiction under s. 100 of the CJA but the motion judge exercised that jurisdiction incorrectly. 235 Co. adopted the approach used by Wilton-Siegel J. in *Romspen Investment Corporation v. Woods Property Development Inc.*, 2011 ONSC 3648, 75 C.B.R. (5th) 109, at para. 190, rev'd on other grounds, 2011 ONCA 817, 286 O.A.C. 189. It took the position that if the real property interest is worthless, contingent, or incomplete, the court has jurisdiction to extinguish

the interest. However here, 235 Co. held complete and non-contingent title to the GORs and its interest had value.

[21] In response, the respondent Third Eye states that a broad purposive interpretation of s. 243 of the BIA and s. 100 of the CJA allows for extinguishment of the GORs. Third Eye also relies on the court's inherent jurisdiction in support of its position. It submits that without a broad and purposive approach, the statutory insolvency provisions are unworkable. In addition, the *Conveyancing and Law of Property Act*, R.S.O. 1990, c. C. 34 ("CLPA") provides a mechanism for rights associated with an encumbrance to be channelled to a payment made into court. Lastly, Third Eye submits that if the court accedes to the position of 235 Co., Dianor's asset and 235 Co.'s GORs will waste. In support of this argument, Third Eye notes there were only two bids for Dianor's mining claims, both of which required the GORs to be significantly reduced or eliminated entirely. For its part, Third Eye states that "there is no deal with the GORs on title" as its bid was contingent on the GORs being vested off.

[22] The respondent Receiver supports the position taken by Third Eye that the motion judge had jurisdiction to grant the order vesting off the GORs and that he appropriately exercised that jurisdiction in granting the order under s. 243 of the BIA and, in the alternative, the court's inherent jurisdiction.

[23] The respondent Algoma supports the position advanced by Third Eye and the Receiver. Both it and 235 Co. have been paid and the Monitor has disbursed the funds paid to Algoma. The transaction cannot now be unwound.

[24] The intervener, the Insolvency Institute of Canada, submits that a principled approach to vesting out property in insolvency proceedings is critical for a properly functioning restructuring regime. It submits that the court has inherent and equitable jurisdiction to extinguish third party proprietary interests, including interests in land, by utilizing a vesting order as a gap-filling measure where the applicable statutory instrument is silent or may not have dealt with the matter exhaustively. The discretion is a narrow but necessary power to prevent undesirable outcomes and to provide added certainty in insolvency proceedings.

(2) Analysis

(a) Significance of Vesting Orders

[25] To appreciate the significance of vesting orders, it is useful to describe their effect. A vesting order "effects the transfer of purchased assets to a purchaser on a *free and clear* basis, while preserving the relative priority of competing claims against the debtor vendor with respect to the proceeds generated by the sale transaction" (emphasis in original): David Bish & Lee Cassey, "Vesting Orders Part 1: The Origins and Development" (2015) 32:4

Nat'l. Insolv. Rev. 41, at p. 42 ("Vesting Orders Part 1"). The order acts as a conveyance of title and also serves to extinguish encumbrances on title.

[26] A review of relevant literature on the subject reflects the pervasiveness of vesting orders in the insolvency arena. Luc Morin and Nicholas Mancini describe the common use of vesting orders in insolvency practice in "Nothing Personal: the *Bloom Lake* Decision and the Growing Outreach of Vesting Orders Against *in personam* Rights" in Janis P. Sarra, ed., *Annual Review of Insolvency Law 2017* (Toronto: Thomson Reuters, 2018) 905, at p. 938:

> Vesting orders are now commonly being used to transfer entire businesses. Savvy insolvency practitioners have identified this path as being less troublesome and more efficient than having to go through a formal plan of arrangement or *BIA* proposal.

[27] The significance of vesting orders in modern insolvency practice is also discussed by Bish and Cassey in "Vesting Orders Part 1", at pp. 41-42:

> Over the past decade, a paradigm shift has occurred in Canadian corporate insolvency practice: there has been a fundamental transition in large cases from a dominant model in which a company restructures its business, operations, and liabilities through a plan of arrangement approved by each creditor class, to one in which a company instead conducts a sale of all or substantially all of its assets on a going concern basis outside of a plan of arrangement …
>
> Unquestionably, this profound transformation would not have been possible without the *vesting order*. It is the cornerstone of the modern "restructuring" age of corporate asset sales and secured creditor realizations ... The vesting order is the holy grail sought by every

> purchaser; it is the carrot dangled by debtors, court officers, and secured creditors alike in pursuing and negotiating sale transactions. If Canadian courts elected to stop granting vesting orders, the effect on the insolvency practice would be immediate and extraordinary. Simply put, the system could not function in its present state without vesting orders. [Emphasis in original.]

[28] The authors emphasize that a considerable portion of Canadian insolvency practice rests firmly on the granting of vesting orders: see David Bish & Lee Cassey, "Vesting Orders Part 2: The Scope of Vesting Orders" (2015) 32:5 Nat'l Insolv. Rev. 53, at p. 56 ("Vesting Orders Part 2"). They write that the statement describing the unique nature of vesting orders reproduced from Houlden, Morawetz and Sarra (and cited at para. 109 of the reasons in stage one of this appeal)[4] which relied on 1985 and 2003 decisions from Saskatchewan is remarkable and bears little semblance to the current practice. The authors do not challenge or criticize the use of vesting orders. They make an observation with which I agree, at p. 65, that: "a more transparent and conscientious

[4] To repeat, the statement quoted from Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed., loose-leaf (Toronto: Carswell, 2009), at Part XI, L§21, said:

> A vesting order should only be granted if the facts are not in dispute and there is no other available or reasonably convenient remedy; or in exceptional circumstances where compliance with the regular and recognized procedure for sale of real estate would result in an injustice. In a receivership, the sale of the real estate should first be approved by the court. The application for approval should be served upon the registered owner and all interested parties. If the sale is approved, the receiver may subsequently apply for a vesting order, but a vesting order should not be made until the rights of all interested parties have either been relinquished or been extinguished by due process. [Citations omitted.]

application of the formative equitable principles and considerations relating to vesting orders will assist in establishing a proper balancing of interests and a framework understood by all participants."

(b) Potential Roots of Jurisdiction

[29] In analysing the issue of whether there is jurisdiction to extinguish 235 Co.'s GORs, I will first address the possible roots of jurisdiction to grant vesting orders and then I will examine how the legal framework applies to the factual scenario engaged by this appeal.

[30] As mentioned, in oral submissions, the appellant conceded that the motion judge had jurisdiction; his error was in exercising that jurisdiction by extinguishing a property interest that belonged to 235 Co. Of course, a party cannot confer jurisdiction on a court on consent or otherwise, and I do not draw on that concession. However, as the submissions of the parties suggest, there are various potential sources of jurisdiction to vest out the GORs: s. 100 of the CJA, s. 243 of the BIA, s. 21 of the CLPA, and the court's inherent jurisdiction. I will address the first three potential roots for jurisdiction. As I will explain, it is unnecessary to resort to reliance on inherent jurisdiction.

(c) The Hierarchical Approach to Jurisdiction in the Insolvency Context

[31] Before turning to an analysis of the potential roots of jurisdiction, it is important to consider the principles which guide a court's determination of questions of jurisdiction in the insolvency context. In *Century Services Inc. v. Canada (Attorney General)***,** 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 65, Deschamps J. adopted the hierarchical approach to addressing the court's jurisdiction in insolvency matters that was espoused by Justice Georgina R. Jackson and Professor Janis Sarra in their article "Selecting the Judicial Tool to Get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters"' in Janis P. Sarra, ed., *Annual Review of Insolvency Law 2007* (Toronto: Thomson Carswell, 2008) 41. The authors suggest that in addressing under-inclusive or skeletal legislation, first one "should engage in statutory interpretation to determine the limits of authority, adopting a broad, liberal and purposive interpretation that may reveal that authority": at p. 42. Only then should one turn to inherent jurisdiction to fill a possible gap. "By determining first whether the legislation can bear a broad and liberal interpretation, judges may avoid the difficulties associated with the exercise of inherent jurisdiction": at p. 44. The authors conclude at p. 94:

> On the authors' reading of the commercial jurisprudence, the problem most often for the court to resolve is that the legislation in question is under-

> inclusive. It is not ambiguous. It simply does not address the application that is before the court, or in some cases, grants the court the authority to make any order it thinks fit. While there can be no magic formula to address this recurring situation, and indeed no one answer, it appears to the authors that practitioners have available a number of tools to accomplish the same end. In determining the right tool, it may be best to consider the judicial task as if in a hierarchy of judicial tools that may be deployed. The first is examination of the statute, commencing with consideration of the precise wording, the legislative history, the object and purposes of the Act, perhaps a consideration of Driedger's principle of reading the words of the Act in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament, and a consideration of the gap-filling power, where applicable. It may very well be that this exercise will reveal that a broad interpretation of the legislation confers the authority on the court to grant the application before it. Only after exhausting this statutory interpretative function should the court consider whether it is appropriate to assert an inherent jurisdiction. Hence, inherent jurisdiction continues to be a valuable tool, but not one that is necessary to utilize in most circumstances.

[32] Elmer A. Driedger's now famous formulation is that the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament: *The Construction of Statutes* (Toronto: Butterworth's, 1974), at p. 67. See also *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141,

at para. 9. This approach recognizes that "statutory interpretation cannot be founded on the wording of the legislation alone": *Rizzo*, at para. 21.

(d) Section 100 of the CJA

[33] This brings me to the CJA. In Ontario, the power to grant a vesting order is conferred by s. 100 of the CJA which states that:

> A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

[34] The roots of s. 100 and vesting orders more generally, can be traced to the courts of equity. Vesting orders originated as a means to enforce an order of the Court of Chancery which was a court of equity. In 1857, *An Act for further increasing the efficiency and simplifying the proceedings of the Court of Chancery*, c. 1857, c. 56, s. VIII was enacted. It provided that where the court had power to order the execution of a deed or conveyance of a property, it now also had the power to make a vesting order for such property.[5] In other words, it is a power to vest property from one party to another in order to implement the order of the court. As explained by this court in *Chippewas of Sarnia Band v. Canada (Attorney General)* (2000), 51 O.R. (3d) 641 (C.A.), at para. 281, leave

[5] Such orders were subsequently described as vesting orders in *An Act respecting the Court of Chancery*, C.S.U.C. 1859, c. 12, s. 63. The authority to grant vesting orders was inserted into the *The Judicature Act*, R.S.O. 1897, c. 51, s. 36 in 1897 when the Courts of Chancery were abolished. Section 100 of the CJA appeared in 1984 with the demise of *The Judicature Act*: see *An Act to revise and consolidate the Law respecting the Organization, Operation and Proceedings of Courts of Justice in Ontario*, S.O. 1984, c. 11, s. 113.

to appeal refused, [2001] S.C.C.A. No. 63, the court's statutory power to make a vesting order supplemented its contempt power by allowing the court to effect a change of title in circumstances where the parties had been directed to deal with property in a certain manner but had failed to do so. Vesting orders are equitable in origin and discretionary in nature: *Chippewas*, at para. 281.

[35] Blair J.A. elaborated on the nature of vesting orders in *Re Regal Constellation Hotel Ltd.* (2004), 71 O.R. (3d) 355 (C.A.), at para. 33:

> A vesting order, then, had a dual character. It is on the one hand a court order ("allowing the court to effect the change of title directly"), and on the other hand a conveyance of title (vesting "an interest in real or personal property" in the party entitled thereto under the order).

[36] Frequently vesting orders would arise in the context of real property, family law and wills and estates. *Trick v. Trick* (2006), 81 O.R. (3d) 241 (C.A.), leave to appeal refused, [2006] S.C.C.A. No. 388, involved a family law dispute over the enforcement of support orders made under the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.). The motion judge in *Trick* had vested 100 per cent of the appellant's private pension in the respondent in order to enforce a support order. In granting the vesting order, the motion judge relied in part on s. 100 of the CJA. On appeal, the appellant argued that the vesting order contravened s. 66(4) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 which permitted execution against a pension benefit to enforce a support order only up to a

maximum of 50 per cent of the benefit. This court allowed the appeal and held that a vesting order under s. 100 of the CJA could not be granted where to do so would contravene a specific provision of the *Pension Benefits Act*: at para. 16. Lang J.A. stated at para. 16 that even if a vesting order was available in equity, that relief should be refused where it would conflict with the specific provisions of the *Pension Benefits Act*. In *obiter*, she observed that s. 100 of the CJA "does not provide a free standing right to property simply because the court considers that result equitable": at para. 19.

[37] The motion judge in the case under appeal rejected the applicability of *Trick* stating, at para. 37:

> That case [*Trick*] i[s] not the same as this case. In that case, there was no right to order the CPP and OAS benefits to be paid to the wife. In this case, the BIA and the *Courts of Justice Act* give the Court that jurisdiction to order the property to be sold and on what terms. Under the receivership in this case, Third Eye is entitled to be the purchaser of the assets pursuant to the bid process authorized by the Court.

[38] It is unclear whether the motion judge was concluding that either statute provided jurisdiction or that together they did so.

[39] Based on the *obiter* in *Trick*, absent an independent basis for jurisdiction, the CJA could not be the sole basis on which to grant a vesting order. There had to be some other root for jurisdiction in addition to or in place of the CJA.

[40] In their article "Vesting Orders Part 1", Bish and Cassey write at p. 49:

> Section 100 of the CJA is silent as to any transfer being on a *free and clear* basis. There appears to be very little written on this subject, but, presumably, the power would flow from the court being a court of equity and from the very practical notion that it, pursuant to its equitable powers, can issue a vesting order transferring assets and should, correspondingly, have the power to set the terms of such transfer so long as such terms accord with the principles of equity. [Emphasis in original.]

[41] This would suggest that provided there is a basis on which to grant an order vesting property in a purchaser, there is a power to vest out interests on a free and clear basis so long as the terms of the order are appropriate and accord with the principles of equity.

[42] This leads me to consider whether jurisdiction exists under s. 243 of the BIA both to sell assets and to set the terms of the sale including the granting of a vesting order.

(e) Section 243 of the BIA

[43] The BIA is remedial legislation and should be given a liberal interpretation to facilitate its objectives: *Ford Motor Company of Canada, Limited v. Welcome Ford Sales Ltd.*, 2011 ABCA 158, 505 A.R. 146, at para. 43; *Nautical Data International Inc., Re*, 2005 NLTD 104, 249 Nfld. & P.E.I.R. 247, at para. 9; *Re Bell*, 2013 ONSC 2682, at para. 125; and *Scenna v. Gurizzan* (1999), 11 C.B.R. (4th) 293 (Ont. S.C.), at para. 4. Within this context, and in order to understand

the scope of s. 243, it is helpful to review the wording, purpose, and history of the provision.

The Wording and Purpose of s. 243

[44] Section 243 was enacted in 2005 and came into force in 2009. It authorizes the court to appoint a receiver where it is "just or convenient" to do so. As explained by the Supreme Court in *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, prior to 2009, receivership proceedings involving assets in more than one province were complicated by the simultaneous proceedings that were required in different jurisdictions. There had been no legislative provision authorizing the appointment of a receiver with authority to act nationally. Rather, receivers were appointed under provincial statutes, such as the CJA, which resulted in a requirement to obtain separate appointments in each province or territory where the debtor had assets. "Because of the inefficiency resulting from this multiplicity of proceedings, the federal government amended its bankruptcy legislation to permit their consolidation through the appointment of a national receiver": *Lemare Lake Logging*, at para. 1. Section 243 was the outcome.

[45] Under s. 243, the court may appoint a receiver to, amongst other things, take any other action that the court considers advisable. Specifically, s. 243(1) states:

> 243(1). Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:
>
> > (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
> >
> > (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or,
> >
> > (c) take any other action that the court considers advisable.

[46] "Receiver" is defined very broadly in s. 243(2), the relevant portion of which states:

> 243(2) [I]n this Part, ***receiver*** means a person who
>
> > (a) is appointed under subsection (1); or
> >
> > (b) is appointed to take or takes possession or control – of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt – under
> >
> > > (i) an agreement under which property becomes subject to a security (in this Part referred to as a "security agreement"), or
> > >
> > > (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or a receiver – manager. [Emphasis in original.]

[47] *Lemare Lake Logging* involved a constitutional challenge to Saskatchewan's farm security legislation. The Supreme Court concluded, at para. 68, that s. 243 had a simple and narrow purpose: the establishment of a

regime allowing for the appointment of a national receiver and the avoidance of a multiplicity of proceedings and resulting inefficiencies. It was not meant to circumvent requirements of provincial laws such as the 150 day notice of intention to enforce requirement found in the Saskatchewan legislation in issue.

The History of s. 243

[48] The origins of s. 243 can be traced back to s. 47 of the BIA which was enacted in 1992. Before 1992, typically in Ontario, receivers were appointed privately or under s. 101 of the CJA and s. 243 was not in existence.

[49] In 1992, s. 47(1) of the BIA provided for the appointment of an interim receiver when the court was satisfied that a secured creditor had or was about to send a notice of intention to enforce security pursuant to s. 244(1). Section 47(2) provided that the court appointing the interim receiver could direct the interim receiver to do any or all of the following:

> 47(2) The court may direct an interim receiver appointed under subsection (1) to do any or all of the following:
>
> > (a) take possession of all or part of the debtor's property mentioned in the appointment;
> >
> > (b) exercise such control over that property, and over the debtor's business, as the court considers advisable; and
> >
> > (c) take such other action as the court considers advisable.

[50] The language of this subsection is similar to that now found in s. 243(1).

[51] Following the enactment of s. 47(2), the courts granted interim receivers broad powers, and it became common to authorize an interim receiver to both operate and manage the debtor's business, and market and sell the debtor's property: Frank Bennett, *Bennett on Bankruptcy*, 21st ed. (Toronto: LexisNexis, 2019), at p. 205; Roderick J. Wood, *Bankruptcy and Insolvency Law*, 2nd ed. (Toronto: Irwin Law, 2015), at pp. 505-506.

[52] Such powers were endorsed by judicial interpretation of s. 47(2). Notably, in *Canada (Minister of Indian Affairs and Northern Development) v. Curragh***,** *Inc.* (1994), 114 D.L.R. (4th) 176 (Ont. Ct. (Gen. Div.)), Farley J. considered whether the language in s. 47(2)(c) that provided that the court could "direct an interim receiver … to … take such other action as the court considers advisable", permitted the court to call for claims against a mining asset in the Yukon and bar claims not filed by a specific date. He determined that it did. He wrote, at p. 185:

> It would appear to me that Parliament did not take away any inherent jurisdiction from the Court but in fact provided, with these general words, that the Court could enlist the services of an interim receiver to do not only what "justice dictates" but also what "practicality demands." It should be recognized that where one is dealing with an insolvency situation one is not dealing with matters which are neatly organized and operating under predictable discipline. Rather the condition of

> insolvency usually carries its own internal seeds of chaos, unpredictability and instability.

See also *Re Loewen Group Inc.* (2001), 22 B.L.R. (3d) 134 (Ont. S.C.)[6].

[53] Although Farley J. spoke of inherent jurisdiction, given that his focus was on providing meaning to the broad language of the provision in the context of Parliament's objective to regulate insolvency matters, this might be more appropriately characterized as statutory jurisdiction under Jackson and Sarra's hierarchy. Farley J. concluded that the broad language employed by Parliament in s. 47(2)(c) provided the court with the ability to direct an interim receiver to do not only what "justice dictates" but also what "practicality demands".

[54] In the intervening period between the 1992 amendments which introduced s. 47, and the 2009 amendments which introduced s. 243, the BIA receivership regime was considered by the Standing Senate Committee on Banking, Trade and Commerce ("Senate Committee"). One of the problems identified by the Senate Committee, and summarized in *Lemare Lake Logging*, at para. 56, was that "in many jurisdictions, courts had extended the power of interim receivers to such an extent that they closely resembled those of court-appointed receivers." This was a deviation from the original intention that interim receivers serve as "temporary watchdogs" meant to "protect and preserve" the debtor's estate and

[6] This case was decided before s. 36 of the *Companies' Creditors Arrangements Act*, R.S.C. 1985, c. C-36 ("CCAA") was enacted but the same principles are applicable.

the interests of the secured creditor during the 10 day period during which the secured creditor was prevented from enforcing its security: *Re Big Sky Living Inc.*, 2002 ABQB 659, 318 A.R. 165, at paras. 7-8; Standing Senate Committee on Banking, Trade and Commerce, *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (Ottawa: Senate of Canada, 2003), at pp. 144-145 ("Senate Committee Report").[7]

[55] Parliament amended s. 47(2) through the *Insolvency Reform Act* 2005 and the *Insolvency Reform Act* 2007 which came into force on September 18, 2009.[8] The amendment both modified the scope and powers of interim receivers, and introduced a receivership regime that was national in scope under s. 243.

[56] Parliament limited the powers conferred on interim receivers by removing the jurisdiction under s. 47(2)(c) authorizing an interim receiver to "take such other action as the court considers advisable". At the same time, Parliament

[7] This 10 day notice period was introduced following the Supreme Court's decision in *R.E. Lister Ltd. v. Dunlop Canada Ltd.*, [1982] 1 S.C.R. 726 (S.C.C.) which required a secured creditor to give reasonable notice prior to the enforcement of its security.

[8] *An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts*, S.C. 2005, c. 47 ("*Insolvency Reform Act* 2005"); *An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act*, *the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada, 2005*, S.C. 2007, c. 36 ("*Insolvency Reform Act* 2007").

introduced s. 243. Notably Parliament adopted substantially the same broad language removed from the old s. 47(2)(c) and placed it into s. 243. To repeat,

> 243(1). On application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:
>
> > (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
> >
> > (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or,
> >
> > (c) take any other action that the court considers advisable. [Emphasis added.]

[57] When Parliament enacted s. 243, it was evident that courts had interpreted the wording "take such other action that the court considers advisable" in s. 47(2)(c) as permitting the court to do what "justice dictates" and "practicality demands". As the Supreme Court observed in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140: "It is a well-established principle that the legislature is presumed to have a mastery of existing law, both common law and statute law". Thus, Parliament's deliberate choice to import the wording from s. 47(2)(c) into s. 243(1)(c) must be considered in interpreting the scope of jurisdiction under s. 243(1) of the BIA.

[58] Professor Wood in his text, at p. 510, suggests that in importing this language, Parliament's intention was that the wide-ranging orders formerly made in relation to interim receivers would be available to s. 243 receivers:

> The court may give the receiver the power to take possession of the debtor's property, exercise control over the debtor's business, and take any other action that the court thinks advisable. This gives the court the ability to make the same wide-ranging orders that it formerly made in respect of interim receivers, including the power to sell the debtor's property out of the ordinary course of business by way of a going-concern sale or a break-up sale of the assets. [Emphasis added.]

[59] However, the language in s. 243(1) should also be compared with the language used by Parliament in s. 65.13(7) of the BIA and s. 36 of the CCAA. Both of these provisions were enacted as part of the same 2009 amendments that established s. 243.

[60] In s. 65.13(7), the BIA contemplates the sale of assets during a proposal proceeding. This provision expressly provides authority to the court to: (i) authorize a sale or disposition (ii) free and clear of any security, charge or other restriction, and (iii) if it does, order the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

[61] The language of s. 36(6) of the CCAA which deals with the sale or disposition of assets of a company under the protection of the CCAA is identical to that of s. 65.13(7) of the BIA.

[62] Section 243 of the BIA does not contain such express language. Rather, as mentioned, s. 243(1)(c) simply uses the language “take any other action that the court considers advisable”.

[63] This squarely presents the problem identified by Jackson and Sarra: the provision is not ambiguous. It simply does not address the issue of whether the court can issue a vesting order under s. 243 of the BIA. Rather, s. 243 uses broad language that grants the court the authority to authorize any action it considers advisable. The question then becomes whether this broad wording, when interpreted in light of the legislative history and statutory purpose, confers jurisdiction to grant sale and vesting orders in the insolvency context. In answering this question, it is important to consider whether the omission from s. 243 of the language found in 65.13(7) of the BIA and s. 36(6) of the CCAA impacts the interpretation of s. 243. To assist in this analysis, recourse may be had to principles of statutory interpretation.

[64] In some circumstances, an intention to exclude certain powers in a legislative provision may be implied from the express inclusion of those powers in another provision. The doctrine of implied exclusion (*expressio unius est*

exclusio alterius) is discussed by Ruth Sullivan in her leading text *Statutory Interpretation*, 3rd ed. (Toronto: Irwin Law, 2016), at p. 154:

> An intention to exclude may legitimately be implied whenever a thing is not mentioned in a context where, if it were meant to be included, one would have expected it to be expressly mentioned. Given an expectation of express mention, the silence of the legislature becomes meaningful. An expectation of express reference legitimately arises whenever a pattern or practice of express reference is discernible. Since such patterns and practices are common in legislation, reliance on implied exclusion reasoning is also common.

[65] However, Sullivan notes that the doctrine of implied exclusion "[l]ike the other presumptions relied on in textual analysis … is merely a presumption and can be rebutted." The Supreme Court has acknowledged that when considering the doctrine of implied exclusion, the provisions must be read in light of their context, legislative histories and objects: see *Marche v. Halifax Insurance Co.*, 2005 SCC 6, [2005] 1 S.C.R. 47, at para. 19, *per* McLachlin C.J.; *Copthorne Holdings Ltd. v. R*., 2011 SCC 63, [2011] 3 S.C.R. 721, at paras. 110-111.

[66] The Supreme Court noted in *Turgeon v. Dominion Bank*, [1930] S.C.R. 67, at pp. 70-71, that the maxim *expressio unius est exclusio alterius* "no doubt … has its uses when it aids to discover intention; but, as has been said, while it is often a valuable servant, it is a dangerous master to follow. Much depends upon the context." In this vein, Rothstein J. stated in *Copthorne*, at paras. 110-111:

> I do not rule out the possibility that in some cases the underlying rationale of a provision would be no broader

> than the text itself. Provisions that may be so construed, having regard to their context and purpose, may support the argument that the text is conclusive because the text is consistent with and fully explains its underlying rationale.
>
> However, the implied exclusion argument is misplaced where it relies exclusively on the text of the … provisions without regard to their underlying rationale.

[67] Thus, in determining whether the doctrine of implied exclusion may assist, a consideration of the context and purpose of s. 65.13 of the BIA and s. 36 of the CCAA is relevant. Section 65.13 of the BIA and s. 36 of the CCAA do not relate to receiverships but to restructurings and reorganizations.

[68] In its review of the two statutes, the Senate Committee concluded that, in certain circumstances involving restructuring proceedings, stakeholders could benefit from an insolvent company selling all or part of its assets, but felt that, in approving such sales, courts should be provided with legislative guidance "regarding minimum requirements to be met during the sale process": Senate Committee Report, pp. 146-148.

[69] Commentators have noted that the purpose of the amendments was to provide "the debtor with greater flexibility in dealing with its property while limiting the possibility of abuse": Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra, *The 2018-2019 Annotated Bankruptcy and Insolvency Act* (Toronto: Thomson Reuters, 2018), at p. 294.

[70] These amendments and their purpose must be read in the context of insolvency practice at the time they were enacted. The nature of restructurings under the CCAA has evolved considerably over time. Now liquidating CCAAs, as they are described, which involve sales rather than a restructuring, are commonplace. The need for greater codification and guidance on the sale of assets outside of the ordinary course of business in restructuring proceedings is highlighted by Professor Wood's discussion of the objective of restructuring law. He notes that while at one time, the objective was relatively uncontested, it has become more complicated as restructurings are increasingly employed as a mechanism for selling the business as a going concern: Wood, at p. 337.

[71] In contrast, as I will discuss further, typically the nub of a receiver's responsibility is the liquidation of the assets of the insolvent debtor. There is much less debate about the objectives of a receivership, and thus less of an impetus for legislative guidance or codification. In this respect, the purpose and context of the sales provisions in s. 65.13 of the BIA and s. 36 of the CCAA are distinct from those of s. 243 of the BIA. Due to the evolving use of the restructuring powers of the court, the former demanded clarity and codification, whereas the law governing sales in the context of receiverships was well established. Accordingly, rather than providing a detailed code governing sales, Parliament utilized broad wording to describe both a receiver and a receiver's powers under s. 243. In light of this distinct context and legislative purpose, I do

not find that the absence of the express language found in s. 65.13 of the BIA and s. 36 of the CCAA from s. 243 forecloses the possibility that the broad wording in s. 243 confers jurisdiction to grant vesting orders.

Section 243 – Jurisdiction to Grant a Sales Approval and Vesting Order

[72] This brings me to an analysis of the broad language of s. 243 in light of its distinct legislative history, objective and purposes. As I have discussed, s. 243 was enacted by Parliament to establish a receivership regime that eliminated a patchwork of provincial proceedings. In enacting this provision, Parliament imported into s. 243(1)(c) the broad wording from the former s. 47(2)(c) which courts had interpreted as conferring jurisdiction to direct an interim receiver to do not only what "justice dictates" but also what "practicality demands". Thus, in interpreting s. 243, it is important to elaborate on the purpose of receiverships generally.

[73] The purpose of a receivership is to "enhance and facilitate the preservation and realization of the assets for the benefit of creditors": *Hamilton Wentworth Credit Union Ltd. v. Courtcliffe Parks Ltd.* (1995)**,** 23 O.R. (3d) 781 (Gen. Div.), at p. 787. Such a purpose is generally achieved through a liquidation of the debtor's assets: Wood, at p. 515. As the Appeal Division of the Nova Scotia Supreme Court noted in *Bayhold Financial Corp. v. Clarkson Co. Ltd. and Scouler* (1991), 108 N.S.R. (2d) 198 (N.S.C.A.), at para. 34, "the essence of a

receiver's powers is to liquidate the assets". The receiver's "primary task is to ensure that the highest value is received for the assets so as to maximise the return to the creditors": *1117387 Ontario Inc. v. National Trust Company*, 2010 ONCA 340, 262 O.A.C. 118, at para. 77.

[74] This purpose is reflected in commercial practice. Typically, the order appointing a receiver includes a power to sell: see for example the Commercial List Model Receivership Order, at para. 3(k). There is no express power in the BIA authorizing a receiver to liquidate or sell property. However, such sales are inherent in court-appointed receiverships and the jurisprudence is replete with examples: see e.g. *bcIMC Construction Fund Corp. v. Chandler Homer Street Ventures Ltd.*, 2008 BCSC 897, 44 C.B.R. (5th) 171 (in Chambers), *Royal Bank v. Fracmaster Ltd.*, 1999 ABCA 178, 11 C.B.R. (4th) 230, *Skyepharma PLC v. Hyal Pharmaceutical Corp.* (1999), 12 C.B.R. (4th) 87 (Ont. S.C.), aff'd (2000), 47 O.R. (3d) 234 (C.A.).

[75] Moreover, the mandatory statutory receiver's reports required by s. 246 of the BIA direct a receiver to file a "statement of all property of which the receiver has taken possession or control that has not yet been sold or realized" during the receivership (emphasis added): *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368, r. 126 ("BIA Rules").

[76] It is thus evident from a broad, liberal, and purposive interpretation of the BIA receivership provisions, including s. 243(1)(c), that implicitly the court has the jurisdiction to approve a sale proposed by a receiver and courts have historically acted on that basis. There is no need to have recourse to provincial legislation such as s.100 of the CJA to sustain that jurisdiction.

[77] Having reached that conclusion, the question then becomes whether this jurisdiction under s. 243 extends to the implementation of the sale through the use of a vesting order as being incidental and ancillary to the power to sell. In my view it does. I reach this conclusion for two reasons. First, vesting orders are necessary in the receivership context to give effect to the court's jurisdiction to approve a sale as conferred by s. 243. Second, this interpretation is consistent with, and furthers the purpose of, s. 243. I will explain.

[78] I should first indicate that the case law on vesting orders in the insolvency context is limited. In *Re New Skeena Forest Products Inc*., 2005 BCCA 154, 9 C.B.R. (5th) 267, the British Columbia Court of Appeal held, at para. 20, that a court-appointed receiver was entitled to sell the assets of New Skeena Forest Products Inc. free and clear of the interests of all creditors and contractors. The court pointed to the receivership order itself as the basis for the receiver to request a vesting order, but did not discuss the basis of the court's jurisdiction to grant the order. In 2001, in *Re Loewen Group Inc.,* Farley J. concluded, at para. 6, that in the CCAA context, the court's inherent jurisdiction formed the

basis of the court's power and authority to grant a vesting order. The case was decided before amendments to the CCAA which now specifically permit the court to authorize a sale of assets free and clear of any charge or other restriction. The Nova Scotia Supreme Court in *Enterprise Cape Breton Corp. v. Crown Jewel Resort Ranch Inc.,* 2014 NSSC 420, 353 N.S.R. (2d) 194 stated that neither provincial legislation nor the BIA provided authority to grant a vesting order.

[79] In *Anglo Pacific Group PLC v. Ernst & Young Inc.*, 2013 QCCA 1323, the Quebec Court of Appeal concluded that pursuant to s. 243(1)(c) of the BIA, a receiver can ask the court to sell the property of the bankrupt debtor, free of any charge. In that case, the judge had discharged a debenture, a royalty agreement and universal hypothecs. After reciting s. 243, Thibault J.A., writing for the court stated, at para 98: “It is pursuant to paragraph 243(1) of the BIA that the receiver can ask the court to sell the property of a bankrupt debtor, free of any charge.” Although in that case, unlike this appeal, the Quebec Court of Appeal concluded that the instruments in issue did not represent interests in land or ‘real rights’, it nonetheless determined that s. 243(1)(c) provided authority for the receiver to seek to sell property free of any charge(s) on the property.

[80] The necessity for a vesting order in the receivership context is apparent. A receiver selling assets does not hold title to the assets and a receivership does

not effect a transfer or vesting of title in the receiver. As Bish and Cassey state in "Vesting Orders Part 2", at p. 58, "[a] vesting order is a vital legal 'bridge' that facilitates the receiver's giving good and undisputed title to a purchaser. It is a document to show to third parties as evidence that the purported conveyance of title by the receiver – which did not hold the title – is legally valid and effective." As previously noted, vesting orders in the insolvency context serve a dual purpose. They provide for the conveyance of title and also serve to extinguish encumbrances on title in order to facilitate the sale of assets.

[81] The Commercial List's Model Receivership Order authorizes a receiver to apply for a vesting order or other orders necessary to convey property "free and clear of any liens or encumbrances": see para. 3(l). This is of course not conclusive but is a reflection of commercial practice. This language is placed in receivership orders often on consent and without the court's advertence to the authority for such a term. As Bish and Cassey note in "Vesting Orders Part 1", at p. 42, the vesting order is the "holy grail" sought by purchasers and has become critical to the ability of debtors and receivers to negotiate sale transactions in the insolvency context. Indeed, the motion judge observed that the granting of vesting orders in receivership sales is "a near daily occurrence on the Commercial List": at para. 31. As such, this aspect of the vesting order assists in advancing the purpose of s. 243 and of receiverships generally, being the realization of the debtor's assets. It is self-evident that purchasers of assets

do not wish to acquire encumbered property. The use of vesting orders is in essence incidental and ancillary to the power to sell.

[82] As I will discuss further, while jurisdiction for this aspect of vesting orders stems from s. 243, the exercise of that jurisdiction is not unbounded.

[83] The jurisdiction to vest assets in a purchaser in the context of a national receivership is reflective of the objective underlying s. 243. With a national receivership, separate sales approval and vesting orders should not be required in each province in which assets are being sold. This is in the interests of efficiency and if it were otherwise, the avoidance of a multiplicity of proceedings objective behind s. 243 would be undermined, as would the remedial purpose of the BIA.

[84] If the power to vest does not arise under s. 243 with the appointment of a national receiver, the sale of assets in different provinces would require a patchwork of vesting orders. This would be so even if the order under s. 243 were on consent of a third party or unopposed, as jurisdiction that does not exist cannot be conferred.

[85] In my view, s. 243 provides jurisdiction to the court to authorize the receiver to enter into an agreement to sell property and in furtherance of that power, to grant an order vesting the purchased property in the purchaser. Thus, here the Receiver had the power under s. 243 of the BIA to enter into an

agreement to sell Dianor's property, to seek approval of that sale, and to request a vesting order from the court to give effect to the sale that was approved.

[86] Lastly, I would also observe that this conclusion supports the flexibility that is a hallmark of the Canadian system of insolvency – it facilitates the maximization of proceeds and realization of the debtor's assets, but as I will explain, at the same time operates to ensure that third party interests are not inappropriately violated. This conclusion is also consonant with contemporary commercial realities; realities that are reflected in the literature on the subject, the submissions of counsel for the intervener, the Insolvency Institute of Canada, and the model Commercial List Sales Approval and Vesting Order. Parliament knew that by importing the broad language of s. 47(2)(c) into s. 243(1)(c), the interpretation accorded s. 243(1) would be consistent, thus reflecting a desire for the receivership regime to be flexible and responsive to evolving commercial practice.

[87] In summary, I conclude that jurisdiction exists under s. 243(1) of the BIA to grant a vesting order vesting property in a purchaser. This jurisdiction extends to receivers who are appointed under the provisions of the BIA.

[88] This analysis does not preclude the possibility that s. 21 of the CLPA also provides authority for vesting property in the purchaser free and clear of

encumbrances. The language of this provision originated in the British *Conveyancing and Law of Property Act, 1881*, 44 & 45 Vict. ch. 41 and has been the subject matter of minimal judicial consideration. In a nutshell, s. 21 states that where land subject to an encumbrance is sold, the court may direct payment into court of an amount sufficient to meet the encumbrance and declare the land to be free from the encumbrance. The word “encumbrance” is not defined in the CLPA.

[89] G. Thomas Johnson in Anne Warner La Forest, ed.,*Anger & Honsberger Law of Real Property*, 3rd ed., loose-leaf (Toronto: Thomson Reuters, 2017), at §34:10 states:

> The word “encumbrance” is not a technical term. Rather, it is a general expression and must be interpreted in the context in which it is found. It has a broad meaning and may include many disparate claims, charges, liens or burdens on land. It has been defined as “every right to or interest in land granted to the diminution of the value of the land but consistent with the passing of the fee”.

[90] The author goes on to acknowledge however, that even this definition, broad as it is, is not comprehensive enough to cover all possible encumbrances.

[91] That said, given that s. 21 of the CLPA was not a basis advanced before the motion judge, for the purposes of this appeal, it is unnecessary to conclusively determine this issue.

B. Was it Appropriate to Vest out 235 Co's GORs?

[92] This takes me to the next issue – the scope of the sales approval and vesting order and whether 235 Co.'s GORs should have been extinguished.

[93] Accepting that the motion judge had the jurisdiction to issue a sales approval and vesting order, the issue then becomes not one of "jurisdiction" but rather one of "appropriateness" as Blair J.A. stated in *Re Canadian Red Cross Society/Société canadienne de la Croix-Rouge* (1998), 5 C.B.R. (4th) 299 (Ont. Ct. (Gen. Div.)), at para. 42, leave to appeal refused, (1998), 32 C.B.R. (4th) 21 (Ont. C.A.). Put differently, should the motion judge have exercised his jurisdiction to extinguish the appellant's GORs from title?

[94] In the first stage of this appeal, this court concluded that the GORs constituted interests in land. In the second stage, I have determined that the motion judge did have jurisdiction to grant a sales approval and vesting order. I must then address the issue of scope and determine whether the motion judge erred in ordering that the GORs be extinguished from title.

(1) Review of the Case Law

[95] As illustrated in the first stage of this appeal and as I will touch upon, a review of the applicable jurisprudence reflects very inconsistent treatment of vesting orders.

[96] In some cases, courts have denied a vesting order on the basis that the debtor's interest in the property circumscribes a receiver's sale rights. For example, in *1565397 Ontario Inc., Re* (2009), 54 C.B.R. (5th) 262 (Ont. S.C.), the receiver sought an order authorizing it to sell the debtor's property free of an undertaking the debtor gave to the respondents to hold two lots in trust if a plan of subdivision was not registered by the closing date. Wilton-Siegel J. found that the undertaking created an interest in land. He stated, at para. 68, that the receiver had taken possession of the property of the debtor only and could not have any interest in the respondents' interest in the property and as such, he was not prepared to authorize the sale free of the undertaking. Wilton-Siegel J. then went on to discuss five "equitable considerations" that justified the refusal to grant the vesting order.

[97] Some cases have weighed "equitable considerations" to determine whether a vesting order is appropriate. This is evident in certain decisions involving the extinguishment of leasehold interests. In *Meridian Credit Union v. 984 Bay Street Inc*., [2005] O.J. No. 3707 (S.C.), the court-appointed receiver had sought a declaration that the debtor's land could be sold free and clear of three non-arm's length leases. Each of the lease agreements provided that it was subordinate to the creditor's security interest, and the lease agreements were not registered on title. This court remitted the matter back to the motion judge and directed him to consider the equities to determine whether it was

appropriate to sell the property free and clear of the leases: see *Meridian Credit Union Ltd. v. 984 Bay Street Inc*., [2006] O.J. No. 1726 (C.A.). The motion judge subsequently concluded that the equities supported an order terminating the leases and vesting title in the purchaser free and clear of any leasehold interests: *Meridian Credit Union v. 984 Bay Street Inc*., [2006] O.J. No. 3169 (S.C.).

[98] An equitable framework was also applied by Wilton-Siegel J. in *Romspen*. In *Romspen*, Home Depot entered into an agreement of purchase and sale with the debtor to acquire a portion of the debtor's property on which a new Home Depot store was to be constructed. The acquisition of the portion of property was contingent on compliance with certain provisions of the *Planning Act*, R.S.O. 1990, c. P.13. The debtor defaulted on its mortgage over its entire property and a receiver was appointed.

[99] The receiver entered into a purchase and sale agreement with a third party and sought an order vesting the property in the purchaser free and clear of Home Depot's interest. Home Depot took the position that the receiver did not have the power to convey the property free of Home Depot's interest. Wilton-Siegel J. concluded that a vesting order could be granted in the circumstances. He rejected Home Depot's argument that the receiver took its interest subject to Home Depot's equitable property interest under the agreement of purchase and

sale and the ground lease, as the agreement was only effective to create an interest in land if the provisions of the *Planning Act* had been complied with.

[100] He then considered the equities between the parties. The mortgage had priority over Home Depot's interest and Home Depot had failed to establish that the mortgagee had consented to the subordination of its mortgage to the leasehold interest. In addition, the purchase and sale agreement contemplated a price substantially below the amount secured by the mortgage, thus there would be no equity available for Home Depot's subordinate interest in any event. Wilton-Siegel J. concluded that the equities favoured a vesting of the property in the purchaser free and clear of Home Depot's interests.[9]

[101] As this review of the case law suggests, and as indicated in the First Reasons, there does not appear to be a consistently applied framework of analysis to determine whether a vesting order extinguishing interests ought to be granted. Generally speaking, outcomes have turned on the particular circumstances of a case accounting for factors such as the nature of the property interest, the dealings between the parties, and the relative priority of the competing interests. It is also clear from this review that many cases have

[9] This court allowed an appeal of the motion judge's order in *Romspen* and remitted the matter back to the motion judge for a new hearing on the basis that the motion judge applied an incorrect standard of proof in making findings of fact by failing to draw reasonable inferences from the evidence, and in particular, on the issue of whether Romspen had expressly or implicitly consented to the construction of the Home Depot stores: see *Romspen Investment Corporation v. Woods Property Development Inc*., 2011 ONCA 817, 286 O.A.C. 189.

considered the equities to determine whether a third party interest should be extinguished.

(2) Framework for Analysis to Determine if a Third Party Interest Should be Extinguished

[102] In my view, in considering whether to grant a vesting order that serves to extinguish rights, a court should adopt a rigorous cascade analysis.

[103] First, the court should assess the nature and strength of the interest that is proposed to be extinguished. The answer to this question may be determinative thus obviating the need to consider other factors.

[104] For instance, I agree with the Receiver's submission that it is difficult to think of circumstances in which a court would vest out a fee simple interest in land. Not all interests in land share the same characteristics as a fee simple, but there are lesser interests in land that would also defy extinguishment due to the nature of the interest. Consider, for example, an easement in active use. It would be impractical to establish an exhaustive list of interests or to prescribe a rigid test to make this determination given the broad spectrum of interests in land recognized by the law.

[105] Rather, in my view, a key inquiry is whether the interest in land is more akin to a fixed monetary interest that is attached to real or personal property subject to the sale (such as a mortgage or a lien for municipal taxes), or whether the interest is more akin to a fee simple that is in substance an

ownership interest in some ascertainable feature of the property itself. This latter type of interest is tied to the inherent characteristics of the property itself; it is not a fixed sum of money that is extinguished when the monetary obligation is fulfilled. Put differently, the reasonable expectation of the owner of such an interest is that its interest is of a continuing nature and, absent consent, cannot be involuntarily extinguished in the ordinary course through a payment in lieu.

[106] Another factor to consider is whether the parties have consented to the vesting of the interest either at the time of the sale before the court, or through prior agreement. As Bish and Cassey note, vesting orders have become a routine aspect of insolvency practice, and are typically granted on consent: “Vesting Orders Part 2”, at pp. 60, 65.

[107] The more complex question arises when consent is given through a prior agreement such as where a third party has subordinated its interest contractually. *Meridian*, *Romspen*, and *Firm Capital Mortgage Funds Inc. v. 2012241 Ontario Ltd.*, 2012 ONSC 4816, 99 C.B.R. (5th) 120 are cases in which the court considered the appropriateness of a vesting order in circumstances where the third party had subordinated its interests. In each of these cases, although the court did not frame the subordination of the interests as the overriding question to consider before weighing the equities, the decisions all acknowledged that the third parties had agreed to subordinate their interest to that of the secured creditor. Conversely, in *Winick v. 1305067*

Ontario Ltd. (2008), 41 C.B.R. (5th) 81 (Ont. S.C.), the court refused to vest out a leasehold interest on the basis that the purchaser had notice of the lease and the purchaser acknowledged that it would purchase the property subject to the terms and conditions of the leases.

[108] The priority of the interests reflected in freely negotiated agreements between parties is an important factor to consider in the analysis of whether an interest in land is capable of being vested out. Such an approach ensures that the express intention of the parties is given sufficient weight and allows parties to contractually negotiate and prioritize their interests in the event of an insolvency.

[109] Thus, in considering whether an interest in land should be extinguished, a court should consider: (1) the nature of the interest in land; and (2) whether the interest holder has consented to the vesting out of their interest either in the insolvency process itself or in agreements reached prior to the insolvency.

[110] If these factors prove to be ambiguous or inconclusive, the court may then engage in a consideration of the equities to determine if a vesting order is appropriate in the particular circumstances of the case. This would include: consideration of the prejudice, if any, to the third party interest holder; whether the third party may be adequately compensated for its interest from the

proceeds of the disposition or sale; whether, based on evidence of value, there is any equity in the property; and whether the parties are acting in good faith. This is not an exhaustive list and there may be other factors that are relevant to the analysis.

(3) The Nature of the Interest in Land of 235 Co.'s GORs

[111] Turning then to the facts of this appeal, in the circumstances of this case, the issue can be resolved by considering the nature of the interest in land held by 235 Co. Here the GORs cannot be said to be a fee simple interest but they certainly were more than a fixed monetary interest that attached to the property. They did not exist simply to secure a fixed finite monetary obligation; rather they were in substance an interest in a continuing and an inherent feature of the property itself.

[112] While it is true, as the Receiver and Third Eye emphasize, that the GORs are linked to the interest of the holder of the mining claims and depend on the development of those claims, that does not make the interest purely monetary. As explained in stage one of this appeal, the nature of the royalty interest as described by the Supreme Court in *Bank of Montreal v. Dynex Petroleum Ltd.*, 2002 SCC 7, [2002] 1 S.C.R. 146, at para. 2 is instructive:

> … [R]oyalty arrangements are common forms of arranging exploration and production in the oil and gas industry in Alberta. Typically, the owner of minerals *in situ* will lease to a potential producer the right to extract such minerals. This right is known as a working interest.

> A royalty is an unencumbered share or fractional interest in the gross production of such working interest. A lessor's royalty is a royalty granted to (or reserved by) the initial lessor. An overriding royalty or a gross overriding royalty is a royalty granted normally by the owner of a working interest to a third party in exchange for consideration which could include, but is not limited to, money or services (e.g., drilling or geological surveying) (G. J. Davies, "The Legal Characterization of Overriding Royalty Interests in Oil and Gas" (1972), 10 *Alta. L. Rev.* 232, at p. 233). The rights and obligations of the two types of royalties are identical. The only difference is to whom the royalty was initially granted. [Italics in original; underlining added.]

[113] Thus, a GOR is an interest in the gross product extracted from the land, not a fixed monetary sum. While the GOR, like a fee simple interest, may be capable of being valued at a point in time, this does not transform the substance of the interest into one that is concerned with a fixed monetary sum rather than an element of the property itself. The interest represented by the GOR is an ownership in the product of the mining claim, either payable by a share of the physical product or a share of revenues. In other words, the GOR carves out an overriding entitlement to an amount of the property interest held by the owner of the mining claims.

[114] The Receiver submits that the realities of commerce and business efficacy in this case are that the mining claims were unsaleable without impairment of the GORs. That may be, but the imperatives of the mining claim owner should not necessarily trump the interest of the owner of the GORs.

[115] Given the nature of 235 Co.'s interest and the absence of any agreement that allows for any competing priority, there is no need to resort to a consideration of the equities. The motion judge erred in granting an order extinguishing 235 Co.'s GORs.

[116] Having concluded that the court had the jurisdiction to grant a vesting order but the motion judge erred in granting a vesting order extinguishing an interest in land in the nature of the GORs, I must then consider whether the appellant failed to preserve its rights such that it is precluded from persuading this court that the order granted by the motion judge ought to be set aside.

C. 235 Co.'s Appeal of the Motion Judge's Order

[117] 235 Co. served its notice of appeal on November 3, 2016, more than a week after the transaction had closed on October 26, 2016.

[118] Third Eye had originally argued that 235 Co.'s appeal was moot because the vesting order was spent when it was registered on title and the conveyance was effected. It relied on this court's decision in *Regal Constellation* in that regard.

[119] Justice Lauwers wrote that additional submissions were required in the face of the conclusion that 235 Co.'s GORs were interests in land: First Reasons, at para. 21. He queried whether it was appropriate for the court-

appointed receiver to close the transaction when the parties were aware that 235 Co. was considering an appeal prior to the closing of the transaction: at para. 22.

[120] There are three questions to consider in addressing what, if any, remedy is available to 235 Co. in these circumstances:

(1) What appeal period applies to 235 Co.'s appeal of the sale approval and vesting order;

(2) Was it permissible for the Receiver to close the transaction in the face of 235 Co.'s October 26, 2016 communication to the Receiver that "an appeal is under consideration"; and

(3) Does 235 Co. nonetheless have a remedy available under the *Land Titles Act*, R.S.O. 1990, c. L.5?

(1) The Applicable Appeal Period

[121] The Receiver was appointed under s. 101 of the CJA and s. 243 of the BIA. The motion judge's decision approving the sale and vesting the property in Third Eye was released through reasons dated October 5, 2016.

[122] Under the CJA, the appeal would be governed by the *Rules of Civil Procedure*, r. 61.04(1) which provides for a 30 day period from which to appeal a final order to the Court of Appeal. In addition, the appellant would have had to have applied for a stay of proceedings.

[123] In contrast, under the BIA, s. 183(2) provides that courts of appeal are “invested with power and jurisdiction at law and in equity, according to their ordinary procedures except as varied by” the BIA or the BIA Rules, to hear and determine appeals. An appeal lies to the Court of Appeal if the point at issue involves future rights; if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings; if the property involved in the appeal exceeds in value $10,000; from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed $5,000; and in any other case by leave of a judge of the Court of Appeal: BIA, s. 193. Given the nature of the dispute and the value in issue, no leave was required and indeed, none of the parties took the position that it was. There is therefore no need to address that issue.

[124] Under r. 31 of the BIA Rules, a notice of appeal must be filed “within 10 days after the day of the order or decision appealed from, or within such further time as a judge of the court of appeal stipulates.”

[125] The 10 days runs from the day the order or decision was rendered: *Moss (Bankrupt), Re* (1999), 138 Man. R. (2d) 318 (C.A., in Chambers), at para. 2; *Re Koska*, 2002 ABCA 138, 303 A.R. 230, at para. 16; *CWB Maxium Financial Inc. v. 6934235 Manitoba Ltd. (c.o.b. White Cross Pharmacy Wolseley)*, 2019 MBCA 28 (in Chambers), at para. 49. This is clear from the fact that both r. 31 and s. 193 speak of “order or decision” (emphasis added). If an

entered and issued order were required, there would be no need for this distinction.[10] Accordingly, the "[t]ime starts to run on an appeal under the *BIA* from the date of pronouncement of the decision, not from the date the order is signed and entered": *Re Koska*, at para. 16.

[126] Although there are cases where parties have conceded that the BIA appeal provisions apply in the face of competing provincial statutory provisions (see e.g. *Ontario Wealth Management Corp. v. SICA Masonry and General Contracting Ltd.*, 2014 ONCA 500, 323 O.A.C. 101 (in Chambers), at para. 36 and *Impact Tool & Mould Inc. v. Impact Tool & Mould Inc. Estate*, 2013 ONCA 697, at para. 1), until recently, no Ontario case had directly addressed this point.

[127] Relying on first principles, as noted by Donald J.M. Brown in *Civil Appeals* (Toronto: Carswell, 2019), at 2:1120, "where federal legislation occupies the field by providing a procedure for an appeal, those provisions prevail over provincial legislation providing for an appeal." Parliament has jurisdiction over procedural law in bankruptcy and hence can provide for appeals: *Re Solloway Mills & Co. Ltd., In Liquidation, Ex Parte I.W.C. Solloway*

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[10] *Ontario Wealth Managements Corporation v. Sica Masonry and General Contracting Ltd.*, 2014 ONCA 500, 323 O.A.C. 101 (in Chambers) a decision of a single judge of this court, states, at para. 5, that a signed, issued, and entered order is required. This is generally the case in civil proceedings unless displaced, as here by a statutory provision. *Re Smoke* (1989), 77 C.B.R. (N.S.) 263 (Ont. C.A.), that is relied upon and cited in *Ontario Wealth Managements Corporation*, does not address this issue.

(1934), [1935] O.R. 37 (C.A.). Where there is an operational or purposive inconsistency between the federal bankruptcy rules and provincial rules on the timing of an appeal, the doctrine of federal paramountcy applies and the federal bankruptcy rules govern: see *Canada (Superintendent of Bankruptcy) v. 407 ETR Concession Company Limited.*, 2013 ONCA 769, 118 O.R. (3d) 161, at para. 59, aff'd 2015 SCC 52, [2015] 3 S.C.R. 397; *Alberta (Attorney General) v. Moloney*, 2015 SCC 51, [2015] 3 S.C.R. 327, at para. 16.

[128] In *Business Development Bank of Canada v. Astoria Organic Matters Ltd*., 2019 ONCA 269, Zarnett J.A. wrote that the appeal route is dependent on the jurisdiction pursuant to which the order was granted. In that case, the appellant was appealing from the refusal of a judge to grant leave to sue the receiver who was stated to have been appointed pursuant to s. 101 of the CJA and s. 243 of the BIA. There was no appeal from the receivership order itself. Thus, to determine the applicable appeal route for the refusal to grant leave, the court was required to determine the source of the power to impose a leave to sue requirement in a receivership order. Zarnett J.A. determined that by necessary implication, Parliament must be taken to have clothed the court with the power to require leave to sue a receiver appointed under s. 243(1) of the BIA and federal paramountcy dictated that the BIA appeal provisions apply.

[129] Here, 235 Co.'s appeal is from the sale approval order, of which the vesting order is a component. Absent a sale, there could be no vesting order.

The jurisdiction of the court to approve the sale, and thus issue the sale approval and vesting order, is squarely within s. 243 of the BIA.

[130] Furthermore, as 235 Co. had known for a considerable time, there could be no sale to Third Eye in the absence of extinguishment of the GORs and Algoma's royalty rights; this was a condition of the sale that was approved by the motion judge. The appellant was stated to be unopposed to the sale but in essence opposed the sale condition requiring the extinguishment. Clearly the jurisdiction to grant the approval of the sale emanated from the BIA, and as I have discussed, so did the vesting component; it was incidental and ancillary to the approval of the sale. It would make little sense to split the two elements of the order in these circumstances. The essence of the order was anchored in the BIA.

[131] Accordingly, I conclude that the appeal period was 10 days as prescribed by r. 31 of the BIA Rules and ran from the date of the motion judge's decision of October 5, 2016. Thus, on a strict application of the BIA Rules, 235 Co.'s appeal was out of time. However, in the circumstances of this case it is relevant to consider first whether it was appropriate for the Receiver to close the transaction in the face of 235 Co.'s assertion that an appeal was under consideration and, second, although only sought in oral submissions in reply at the hearing of the second stage of this appeal, whether 235 Co. should be granted an extension of time to appeal.

(2) The Receiver's Conduct

[132] The Receiver argues that it was appropriate for it to close the transaction in the face of a threatened appeal because the appeal period had expired when the appellant advised the Receiver that it was contemplating an appeal (without having filed a notice of appeal or a request for leave) and the Receiver was bound by the provisions of the purchase and sale agreement and the order of the motion judge, which was not stayed, to close the transaction.

[133] Generally speaking, as a matter of professional courtesy, a potentially preclusive step ought not to be taken when a party is advised of a possible pending appeal. However, here the Receiver's conduct in closing the transaction must be placed in context.

[134] 235 Co. had known of the terms of the agreement of purchase and sale and the request for an order extinguishing its GORs for over a month, and of the motion judge's decision for just under a month before it served its notice of appeal. Before October 26, 2016, it had never expressed an intention to appeal either informally or by serving a notice of appeal, nor did it ever bring a motion for a stay of the motion judge's decision or seek an extension of time to appeal.

[135] Having had the agreement of purchase and sale at least since it was served with the Receiver's motion record seeking approval of the transaction, 235 Co. knew that time was of the essence. Moreover, it also knew that the

Receiver was directed by the court to take such steps as were necessary for the completion of the transaction contemplated in the purchase and sale agreement approved by the motion judge pursuant to para. 2 of the draft court order included in the motion record.

[136] The principal of 235 Co. had been the original prospector of Dianor. 235 Co. never took issue with the proposed sale to Third Eye. The Receiver obtained a valuation of Dianor's mining claims and the valuator concluded that they had a total value of $1 million to $2 million, with 235 Co.'s GORs having a value of between $150,000 and $300,000, and Algoma's royalties having a value of $70,000 to $140,000. No evidence of any competing valuation was adduced by 235 Co.

[137] Algoma agreed to a payment of $150,000 but 235 Co. wanted more than the $250,000 offered. The motion judge, who had been supervising the receivership, stated that 235 Co. acknowledged that the sum of $250,000 represented the fair market value: at para. 15. He made a finding at para. 38 of his reasons that the principal of 235 Co. was "not entitled to exercise tactical positions to tyrannize the majority by refusing to agree to a reasonable amount for the royalty rights." In *obiter*, the motion judge observed that he saw "no reason in logic … why the jurisdiction would not be the same whether the royalty rights were or were not an interest in land": at para. 40. Furthermore, the appellant knew of the motion judge's reasons for decision since October 5,

2016 and did nothing that suggested any intention to appeal until about three weeks later.

[138] As noted by the Receiver, it is in the interests of the efficient administration of receivership proceedings that aggrieved stakeholders act promptly and definitively to challenge a decision they dispute. This principle is in keeping with the more abbreviated time period found in the BIA Rules. Blair J.A. in *Regal Constellation*, at para. 49, stated that "[t]hese matters ought not to be determined on the basis that 'the race is to the swiftest'". However, that should not be taken to mean that the race is adjusted to the pace of the slowest.

[139] For whatever reasons, 235 Co. made a tactical decision to take no steps to challenge the motion judge's decision and took no steps to preserve any rights it had. It now must absorb the consequences associated with that decision. This is not to say that the Receiver's conduct would always be advisable. Absent some emergency that has been highlighted in its Receiver's report to the court that supports its request for a vesting order, a Receiver should await the expiry of the 10 day appeal period before closing the sale transaction to which the vesting order relates.

[140] Given the context and history of dealings coupled with the actual expiry of the appeal period, I conclude that it was permissible for the Receiver to close the transaction. In my view, the appeal by 235 Co. was out of time.

(3) Remedy is not Merited

[141] As mentioned, in oral submissions in reply, 235 Co. sought an extension of time to appeal *nunc pro tunc*. It further requested that this court exercise its discretion and grant an order pursuant to ss. 159 and 160 of the *Land Titles Act* rectifying the title and granting an order directing the Minings Claim Recorder to rectify the provincial register so that 235 Co.'s GORs are reinstated. The Receiver resists this relief. Third Eye does not oppose the relief requested by 235 Co. provided that the compensation paid to 235 Co. and Algoma is repaid. However, counsel for the Monitor for Algoma states that the $150,000 it received for Algoma's royalty rights has already been disbursed by the Monitor to Algoma.

[142] The rules and jurisprudence surrounding extensions of time in bankruptcy proceedings is discussed in Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed., loose-leaf (Toronto: Thomson Reuters, 2009). Rule 31(1) of the BIA Rules provides that a judge of the Court of Appeal may extend the time to appeal. The authors write, at pp. 8-20-8-21:

> The court ought not lightly to interfere with the time limit fixed for bringing appeals, and special circumstances are required before the court will enlarge the time …
>
> In deciding whether the time for appealing should be extended, the following matters have been held to be relevant:

> (1) The appellant formed an intention to appeal before the expiration of the 10 day period;
>
> (2) The appellant informed the respondent, either expressly or impliedly, of the intention to appeal;
>
> (3) There was a continuous intention to appeal during the period when the appeal should have been commenced;
>
> (4) There is a sufficient reason why, within the 10 day period, a notice of appeal was not filed…;
>
> (5) The respondent will not be prejudiced by extending the time;
>
> (6) There is an arguable ground or grounds of appeal;
>
> (7) It is in the interest of justice, i.e., the interest of the parties, that an extension be granted. [Citations omitted.]

[143] These factors are somewhat similar to those considered by this court when an extension of time is sought under r. 3.02 of the *Rules of Civil Procedure*: did the appellant form a *bona fide* intention to appeal within the relevant time period; the length of and explanation for the delay; prejudice to the respondents; and the merits of the appeal. The justice of the case is the overarching principle: see *Enbridge Gas Distributions Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636 (in Chambers), at para. 15.

[144] There is no evidence that 235 Co. formed an intention to appeal within the applicable appeal period, and there is no explanation for that failure. The appellant did not inform the respondents either expressly or impliedly that it

was intending to appeal. At best, it advised the Receiver that an appeal was under consideration 21 days after the motion judge released his decision. The fact that it, and others, might have thought that a longer appeal period was available is not compelling seeing that 235 Co. had known of the position of the respondents and the terms of the proposed sale since at least August 2016 and did nothing to suggest any intention to appeal if 235 Co. proved to be unsuccessful on the motion. Although the merits of the appeal as they relate to its interest in the GORs favour 235 Co.'s case, the justice of the case does not. I so conclude for the following reasons.

1. 235 Co. sat on its rights and did nothing for too long knowing that others would be relying on the motion judge's decision.

2. 235 Co. never opposed the sale approval despite knowing that the only offers that ever resulted from the court approved bidding process required that the GORs and Algoma's royalties be significantly reduced or extinguished.

3. Even if I were to accept that the *Rules of Civil Procedure* governed the appeal, which I do not, 235 Co. never sought a stay of the motion judge's order under the *Rules of Civil Procedure*. Taken together, this supports the inference that 235 Co. did not form an intention to appeal at the relevant time and ultimately only served a notice of appeal as a tactical manoeuvre to engineer a

bigger payment from Third Eye. As found by the motion judge, 235 Co. ought not to be permitted to take tyrannical tactical positions.

4. The Receiver obtained a valuation of the mining claims that concluded that the value of 235 Co.'s GORs was between $150,000 and $300,000. Before the motion judge, 235 Co. acknowledged that the payment of $250,000 represented the fair market value of its GORs. Furthermore, it filed no valuation evidence to the contrary. Any prejudice to 235 Co. is therefore attenuated. It has been paid the value of its interest.

5. Although there are no subsequent registrations on title other than Third Eye's assignee, Algoma's Monitor has been paid for its royalty interest and the funds have been distributed to Algoma. Third Eye states that if the GORs are reinstated, so too should the payments it made to 235 Co. and Algoma. Algoma has been under CCAA protection itself and, not surprisingly, does not support an unwinding of the transaction.

[145] I conclude that the justice of the case does not warrant an extension of time. I therefore would not grant 235 Co. an extension of time to appeal *nunc pro tunc*.

[146] While 235 Co. could have separately sought a discretionary remedy under the *Land Titles Act* for rectification of title in the manner contemplated in *Regal Constellation*, at paras. 39, 45, for the same reasons I also would not

exercise my discretion or refer the matter back to the motion judge to grant an order pursuant to ss. 159 and 160 of the *Land Titles Act* rectifying the title and an order directing the Mining Claims Recorder to rectify the provincial register so that 235 Co.'s GORs are reinstated.

Disposition

[147] In conclusion, the motion judge had jurisdiction pursuant to s. 243(1) of the BIA to grant a sale approval and vesting order. Given the nature of the GORs the motion judge erred in concluding that it was appropriate to extinguish them from title. However, 235 Co. failed to appeal on a timely basis within the time period prescribed by the BIA Rules and the justice of the case does not warrant an extension of time. I also would not exercise my discretion to grant any remedy to 235 Co. under any other statutory provision. Accordingly, it is entitled to the $250,000 payment it has already received and that its counsel is holding in escrow.

[148] For these reasons, the appeal is dismissed. As agreed by the parties, I would order Third Eye to pay costs of $30,000 to 235 Co. in respect of the first stage of the appeal and that all parties with the exception of the Receiver bear their own costs of the second stage of the appeal. I would permit the Receiver to make brief written submissions on its costs within 10 days of the

release of these reasons and the other parties to reply if necessary within 10 days thereafter.

Released: “SEP” JUN 19, 2019

“S.E. Pepall J.A.”
“I agree. P. Lauwers J.A.”
“I agree. Grant Huscroft J.A.”

This is Exhibit "R" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

COURT OF APPEAL FOR ONTARIO

CITATION: Third Eye Capital Corporation v. Ressources Dianor Inc./
Dianor Resources Inc., 2018 ONCA 253
DATE: 20180315
DOCKET: C62925 (M47498)

Pepall, Lauwers and Huscroft JJ.A.

Application under section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

BETWEEN

Third Eye Capital Corporation

Applicant
(Respondent)

and

Ressources Dianor Inc./Dianor Resources Inc.

Respondent
(Respondent)

Daniel J. Matson and Roderick W. Johansen, for the appellant, 2350614 Ontario Inc.

Shara N. Roy, for the respondent Third Eye Capital Corporation

Dylan Chochla, for the receiver of Dianor Resources Inc., Richter Advisory Group Inc.

Delna Contractor, for the monitor of Essar Steel Algoma Inc., Ernst & Young Inc.

Heard: May 23, 2017

On appeal from the order of Justice Frank J.C. Newbould of the Superior Court of Justice, dated October 5, 2016, with reasons reported at 2016 ONSC 6086.

Lauwers J.A.:

A. THE CONTEXT OF THE APPEAL

[1] Dianor Resources Inc. was insolvent. At the request of the respondent, Third Eye Capital Corporation as a lender, the court appointed a receiver under s. 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("*BIA*"), and s. 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43 ("*CJA*"), over the assets, undertakings, and property of the debtor, Dianor[1].

[2] Dianor's main asset was a group of mining claims. The claims with which this appeal is concerned were subject to, among other things, a "Gross Overriding Royalty" ("GOR") in favour of a company from which the appellant, 2350614 Ontario Inc. ("235Co"), had acquired the royalty rights. Notices of the agreements granting the GORs were registered on title to the surface rights and the mining rights.

[3] The supervising judge made an order approving a bid process for the sale of Dianor's mining claims. It generated two bids, both containing a condition that the GORs be terminated or significantly reduced. Third Eye was the successful bidder.

[4] At the request of the receiver, the motion judge approved the sale of the mining claims to Third Eye and granted a vesting order that purported to

[1] The motion judge was not acting under s. 65.13(7) of the *BIA*; s. 36(6) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("*CCAA*"); ss. 66(1.1) and 84.1 of the *BIA*; or s. 11.3 of the *CCAA*.

extinguish the GORs. 235 did not oppose the sale but asked that the property vested in Third Eye be subject to the GORs.

[5] The motion judge rejected the appellant's argument that the claims would continue to be subject to the GORs after their transfer to Third Eye. He held, at para. 30: "that the GORs do not run with the land or grant the holder of the GORs an interest in the lands over which Dianor holds the mineral rights." The motion judge also held, at para. 38, that ss. 11(2), 100, and 101 of the *CJA*, gave him "the jurisdiction to grant a vesting order of the assets to be sold to Third Eye on such terms as are just" including the authority to dispense with the royalty rights. He found the expert's valuation of the royalty rights to be fair and added, at para. 39:

> In my view, it is appropriate and just that a vesting order in the usual terms be granted to Third Eye on the condition that $250,000 be paid to 235Co. or whatever entity Mr. Leadbetter directs the payment to be made. That is higher than the mid-point of the range of values determined by Dr. Roscoe.

[6] The receiver paid this amount to 235Co. The funds are being held in trust pending the outcome of this appeal.

[7] 235Co also brought a cross-motion claiming payment for a debt owing under the *Repair and Storage Liens Act*, R.S.O. 1990, c. R.25. The motion judge dismissed the cross-motion.

[8] In this appeal, 235Co seeks to set aside the order of the motion judge and to obtain an order that 235Co's GORs constitute a interests in land, along with consequential relief. Third Eye moved for an order quashing 235Co's Notice of Appeal on the basis that the appeal is moot because 235Co did not seek a stay of the vesting order, which operated to extinguish the GORs when it was registered on title. Furthermore, the variation 235Co seeks to the vesting order is unavailable as the subject transaction was predicated on the elimination of the GORs.

[9] For the reasons that follow, it would be premature to quash the appeal. I would hold that 235Co's GORs constitute an interest in land, but I would require additional submissions on whether the motion judge had jurisdiction to vest out 235Co's GORs in the sale to Third Eye, and if not, whether 235Co is entitled to a remedy. I would dismiss 235Co's appeal with respect to the lien claim.

B. OVERVIEW OF THESE REASONS

[10] The preliminary issue raised by Third Eye is whether registration of the vesting order on title had the legal effect of rendering the appeal moot.

[11] The central issue in this case is whether the GORs constitute interests in land within the meaning of the law outlined by the Supreme Court in *Bank of Montreal v. Dynex Petroleum Ltd.*, 2002 SCC 7, [2002] 1 S.C.R. 146. I conclude that the GORs are interests in land, contrary to the holding of the motion judge.

[12] This gives rise to the related issue: if the claims are subject to the GORs, did the motion judge have jurisdiction to vest out the GORs?

[13] If the motion judge had jurisdiction to vest out the GORs, then 235Co is not entitled to a remedy. But if he lacked this jurisdiction, then 235Co might be entitled to a remedy, including a possible remedy under the *Land Titles Act*, R.S.O. 1990, c. L.5 ("*LTA*"). Because neither the issue of jurisdiction nor of remedy was adequately argued by the parties in their factums or in oral argument, I would require additional submissions on the issues specified below, especially since they are of considerable importance to the insolvency practice.

[14] Finally, I conclude that 235Co, as the purported owner of the surface rights, is not entitled to a storer's lien in respect of Dianor's surface works. I would dismiss the appeal on the lien claim for the reasons given by the motion judge and will not address it further.

[15] I address, first, Third Eye's motion to quash the appeal and then address the remaining issues in sequence.

C. THE FIRST ISSUE: IS THE APPEAL MOOT?

[16] The appellant did not seek a stay of the vesting order pending appeal before the vesting order was registered on title, although it could have done so on a timely basis. Generally, a vesting order cannot be attacked on appeal unless a stay order has been obtained: Lloyd W. Houlden, Geoffrey B. Morawetz

& Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th ed. (Toronto: Carswell, 2009), at Part XI, L§21.

[17] Third Eye submits that the appeal is moot because the vesting order was "spent" when it was registered, relying in part on *Regal Constellation Hotel Ltd., Re* (2004), 71 O.R. (3d) 355 (C.A.). In that case, a hotel was placed into receivership. The receiver found a purchaser. The court approved the sale and granted a vesting order in favour of the purchaser. A few days later, the sole shareholder of the company that operated the hotel discovered information about the identity of the group behind the purchaser. This was relevant because the group had previously entered into agreements to purchase the hotel for more money, but the transactions had failed to close. The sole shareholder sought to set aside the vesting order on the basis that the receiver had failed to disclose the identity of the group behind the purchaser.

[18] This court quashed the appeal in *Regal Constellation* as moot. The conditions attached to the vesting order had been met and the vesting order (and the bank's mortgage) had been registered on title. Justice Blair stated, at para. 39:

> Once a vesting order that has not been stayed is registered on title …, it is effective as a registered instrument and its characteristics as an order are, in my view, overtaken by its characteristics as a registered conveyance on title. In a way somewhat analogous to the merger of an agreement of purchase and sale into

> the deed on the closing of a real estate transaction, the character of a vesting order as an "order" is merged into the instrument of conveyance it becomes on registration. It cannot be attacked except by means that apply to any other instrument transferring absolute title and registered under the land titles system. Those means no longer include an attempt to impeach the vesting order by way of appeal from the order granting it because, as an order, its effect is spent. Any such appeal would accordingly be moot.

[19] Where no stay is obtained and the order has been registered, “innocent third parties are entitled to rely upon that change [in title],” as Blair J.A. noted, at para. 45 of *Regal Constellation*. Accordingly, the respondent argues that this appeal is moot.

[20] It cannot be said that the appeal is moot in the particular circumstances of this case. The order is spent, but the remedy for rectification under the *LTA*, left open by Blair J.A. in *Regal Constellation*, may be available to the appellant, provided that several conditions are met: (1) the motion judge had no jurisdiction to vest out the GORs; (2) no innocent third party has relied on the title to its detriment; and (3) the appellant is otherwise entitled to the remedy.

[21] Additional submissions are required. In particular, because I conclude the GORs are interests in land, does the fact that Third Eye had notice of 235Co’s claim affect the application of *Regal Constellation*? Third Eye was aware that 235Co was considering an appeal on the day of (but prior to) the closing of the transaction.

[22] Blair J.A.'s observation in *Regal Constellation*, at para. 49 was: "These matters ought not to be determined on the basis that 'the race is to the swiftest'." Was it appropriate for the court-appointed receiver to close the transaction before the expiry of the appeal period, having been advised that an appeal could be launched, and how does this affect the availability of a remedy?

[23] As Blair J.A. recognized, vesting orders have a dual character as both a court order and a conveyance. Once an order is registered on title, it is effective as a registered instrument and has lost its character as an order. However, in my view, this does not mean that 235Co is necessarily without a remedy, if the GORs constitute interests in land. As Blair J.A. noted in *Regal Constellation*, the vesting order "cannot be attacked except by means that apply to any other instrument transferring absolute title and registered under the land titles system": at para. 39. If the GORs are interests in land, then the appellant's remedy is to be found under the *LTA.* In these circumstances, it would be premature to quash the appeal. It is to the issue of the nature of the interest that I now turn.

D. THE SECOND ISSUE: ARE THE GORS INTERESTS IN LAND?

[24] As noted, I conclude that the GORs are interests in land, contrary to the holding of the motion judge. In this section of the reasons, I first set out the facts relevant to the issue, then discuss the governing legal principles, the motion judge's reasons, and finally, the proper application of the governing principles.

(1) The Facts Relevant to the GORs

[25] The facts relevant to this issue are set out in the motion judge's decision at paras. 4, 5, and 17-22, which I paraphrase. Dianor's assets consisted mainly of certain mining claims in Ontario and Quebec, both patented and unpatented. The asset sale to Third Eye covered only the Ontario assets.

[26] Dianor obtained the mining rights under a Crown Land Agreement and a Patented Land Agreement made with 3814793 Ontario Inc., a company controlled by Mr. Leadbetter and his wife Paulette A. Mousseau-Leadbetter. The terms of the Crown Land Agreement and the Patented Land Agreement, both dated August 25, 2008, govern. The relevant terms in each are virtually identical:

> Once the Optionee [Dianor] becomes the owner of a one hundred percent (100%) undivided interest in the Mining Claims, the Optionors [now 235Co] shall retain a twenty percent (20%) Gross Overriding Royalty ('GOR') for diamonds and a one and a half percent (1.5%) gross overriding royalty (GOR) for all other metals and minerals as calculated in accordance with Schedule 'A'. The Optionee shall have the right of first refusal to purchase the Optionors' GOR.

[27] The Crown Land Agreement and the Patented Land Agreement state that the parties intend the GORs to create an interest in and to run with the land:

> 4.1. It is the intent of the parties hereto that the GOR shall constitute a covenant and an interest in land running with the Property and the Mining Claims and all successions thereof or leases or other tenures which may replace them, whether created privately or through

> governmental action, and including, without limitation, any leasehold interest.

[28] Notices of the GORs were registered on title to the patented lands under s. 71 of the *LTA* and on the unpatented mining claims under the *Mining Act*, R.S.O. 1990, c. M.14. The parties did not treat the fact that 235Co came to hold the GORs as a live issue.

[29] I turn now to the governing legal principles.

(2) The Governing Principles

[30] The ruling precedent is the decision of the Supreme Court of Canada in *Dynex*, which changed the common law to permit a GOR to achieve status as an interest in land. I begin with a review of the common law before *Dynex* and the challenges it posed to mining in Canada, then consider how the court responded to the commercial realities of the mining industry in *Dynex*.

(a) The common law before *Dynex*

[31] At common law, rights in relation to land are divided into corporeal and incorporeal hereditaments: Bruce H. Ziff, *Principles of Property Law*, 6th ed. (Toronto: Carswell, 2014), at p. 76. A corporeal hereditament is an interest in land that is capable of being held in possession, such as a fee simple. An incorporeal hereditament is an interest in land that is non-possessory such as

easements, *profits à prendre*, and rent charges. Under each type of incorporeal hereditament, the holder has an interest in land.

[32] Mining rights derived from the owner of the mineral estate are generally treated by the common law as *profits à prendre*, depending on the words of grant. A *profit à prendre* is "a real property interest entitling the holder to acquire some natural resource on land belonging to another": Ziff, at p. 321. More specifically, it is "a right to take something from the land of another. And it must be literally 'from' the land. The right must be to take … part of the land itself, e.g., minerals": Andrew Burrows, ed., *English Private Law*, 3rd ed. (Oxford: Oxford University Press, 2013), at s. 4.96.

[33] To constitute a *profit à prendre*, a party must be granted the right to enter the lands of another and to exploit a natural resource: Ziff, at p. 399. See also, Alicia K. Quesnel, "*Modernizing the Property Laws that Bind Us: Challenging Traditional Property Law Concepts Unsuited to the Realities of the Oil and Gas Industry*" (2003) 41 Alta. L. Rev. 159, at pp. 172-173.

[34] The Supreme Court stated in *Dynex*, at para. 21: "A royalty which is an interest in land may be created from an incorporeal hereditament such as a working interest or a *profit à prendre*". A working interest is a *profit à prendre* and is a right given by the fee owner (often the Crown) to a miner to enter the owner's

land and extract minerals or resources from the property. The Court of Appeal of Alberta has stated:

> [T]he law is clear that a "working interest" in relation to mineral substances *in situ* is a particular kind of property right or interest in land. When the owner of minerals *in situ* (the Crown in this case) leases the right to extract these minerals …, the right to extract is known as a "working interest" …. This particular kind of interest in land is also commonly called a "*profit à prendre*", which allows a party to enter land and take a resource for profit.

IFP Technologies (Canada) Inc. v. EnCana Midstream and Marketing, 2017 ABCA 157, 53 Alta. L.R. (6th) 96, at para. 98, leave to appeal filed, [2017] S.C.C.A. No. 303.

[35] At common law prior to *Dynex*, if a party did not have the right to enter and to extract a resource from the land, then it did not have a *profit à prendre* and did not have an interest in land – regardless of the parties' intentions. Moreover, as the Supreme Court noted in *Dynex*, at para. 8: "At common law, an interest in land could issue from a corporeal hereditament but not from an incorporeal hereditament." On this logic, the right to a payment or to profits was not itself a *profit à prendre*, and a royalty right contractually carved out of a working interest could not confer an interest in land. Further, as Quesnel observed, once "the subject-matter of the grant [e.g., minerals]" is extracted from the ground and in possession, it becomes personal property. "The right … does not 'run' with the

subject-matter of the grant after it has been [extracted] and reduced to possession": at p. 173.

[36] To sum up the common law, the right to take resources from another person's land is a *profit à prendre* and is recognized as an interest in land. However, the right to a payment or to profits alone is not a *profit à prendre* and was not historically recognized as an interest in land.

[37] Because an interest in land could not be granted out of an incorporeal hereditament, the common law posed commercial challenges to holders of working interests who needed to secure financing sources to allow for the exploitation of mining rights: Quesnel, at pp. 173-175.

(b) The practice in mining before *Dynex*

[38] Working interests are common in the mining, oil, and gas industries of Canada and play an important role in the Canadian economy. Resource extraction is a risky business; ventures in resource extraction "require huge amounts of capital but only a small fraction are successful," as the Court of Appeal of Alberta observed in *Bank of Montreal v. Dynex Petroleum Ltd.*, 1999 ABCA 363, [2000] 2 W.W.R. 693, at para. 35.

[39] Royalty agreements are one method used in the industry to provide incentives to key participants such as geological surveyors or drilling companies, or to those selling the claims, as in this case. In granting a GOR, the working

interest holder grants royalty rights to a third party. These royalty rights are generally granted out of the lessee's working interest. The royalty amount is not tied to the profitability of the mine. Third parties who obtain royalty rights do not own the working interest or *profit à prendre* and have no independent ownership interest in the land.

[40] As the Court of Appeal of Alberta noted in *Dynex*, it became industry practice to draft contracts with the intention of granting royalty holders an interest in land because it was commercially and practically expedient to do so. Key participants often prefer an interest in land rather than a contractual right against the lessee because this allows "investments in a particular piece of property, not in a particular operator or company. ... The investment return on a royalty results from the success of the property regardless of who owns or is working the property", as the Court of Appeal of Alberta explained in *Dynex*, (at para. 36).

[41] Interests in land provide incentives to key participants, mitigate financial risks, and provide better financing terms. As the Alberta Court of Appeal observed in *Dynex*, interests in land provide key participants with exposure to a potentially significant upside if the venture is successful. Granting such an interest as a form of compensation reduces the amount of initial capital necessary to fund a new venture. This allows the working interest holder to reduce its own exposure to loss and thereby spreads risk among key participants. Providing lenders with real property interests protects them in the

event of an insolvency and leads to better financing terms for borrowers. The Court, endorsing an industry commentator's view, explained at para. 43:

> [T]he law should provide a framework within which unnecessary risks for those who invest or participate in oil and gas operations are removed. The oil and gas industry has created new devices to meet the high risks of the enterprise. Included among the new devices are non-operating interests which are used to make the sharing of the benefits of mineral ownership definite and certain, minimize taxes, make clear delegation of operating rights and make proper allocation of the risks and rewards of an operation without invoking many objectionable features associated with creating a conventional business association. Non-operating interests include royalty interests, overriding royalty interests, production payments, net profit interests and carried interests.

[42] Consequently, for practical and commercial reasons, even before *Dynex*, parties often drafted royalty agreements with the intention of granting the royalty holder an interest in land rather than a contractual right against the lessee. See Nigel Bankes*, "*Private Royalty Issues: A Canadian Viewpoint*",* Private Oil & Gas Royalties, Rocky Mountain Mineral Law Foundation, February 2003, at p. 21.[2]

[43] In *Dynex*, the Supreme Court quite deliberately changed the common law in response to these commercial realities.

[2] Online: <http://law.ucalgary.ca/files/law/rmli-royalty-paper-feb-2003-final.pdf>.

(c) *Dynex* and changes to the common law

[44] In a nutshell, as I will explain more fully below, the Supreme Court in *Dynex* changed the common law of Canada for express policy reasons in order to permit a royalty interest, including a GOR, to become an interest in land, consistent with the industry practice. In this section of the reasons, I set out the facts in *Dynex*, and then review the reasons of the Court of Appeal of Alberta and the Supreme Court.

(i) The facts in *Dynex*

[45] Dynex Petroleum had granted an overriding royalty on the net profit interests from its oil and gas properties to Enchant Resources Ltd. and an individual. The royalty interests were recorded on the title to the oil and gas properties by means of caveat. The Bank of Montreal was a secured creditor and wanted to sell the oil and gas properties free of the royalty interests of Enchant Resources and the individual. The motion judge ruled that the Bank could sell the properties free of the royalty interests.

(ii) The Ruling of the Court of Appeal of Alberta in *Dynex*

[46] The Court of Appeal of Alberta decided that the royalty interest could be an interest in land despite the common law rule that an incorporeal hereditament

could not give rise to an interest in land.[3] The Court adopted the dissenting reasons of Laskin J. (as he then was) in *Saskatchewan Minerals v. Keyes*, [1972] S.C.R. 703, at p. 725, who held that a royalty interest could be an interest in land if the parties so intended. The parties' intent could be inferred from a number of factors, which the Court addressed at paras. 84 and 85.

[47] I make two observations. First, the Court of Appeal of Alberta took a practical view, approving the approach taken in two lower court decisions: *Canco Oil & Gas Ltd. v. Saskatchewan* (1991), 89 Sask. R. 37 (Q.B.); and *Scurry-Rainbow Oil Ltd. v. Galloway Estate*, [1993] 4 W.W.R. 454 (Alta. Q.B.); aff'd 1994 ABCA 313, [1995] 1 W.W.R. 316; leave to appeal refused, [1994] S.C.C.A. No. 475. The Court noted, at para. 73:

> The approach of both Matheson J. in *Canco* and Hunt J. in *Scurry-Rainbow* was to examine the parties' intentions from the agreement as a whole, along with the surrounding circumstances, as opposed to searching for some magic words. Matheson J. stated at p. 47:
>
> > . . . The fact that Farmers Mutual did not utilize all of the wording, or type of wording considered by some persons as perhaps essential, can surely not detract from an otherwise clearly manifested intention to create an interest in the lands.

[3] The Court of Appeal of Alberta did not decide the factual issue but sent it to trial, an outcome affirmed by the Supreme Court. The trial judge held that the documents in *Dynex* did not grant any interest in the land: 2003 ABQB 243, 1 C.B.R (5th) 188.

And according to Hunt J. in *Scurry-Rainbow*, at p. 474:

> There is in my view an unreality about placing too heavy an emphasis upon fine distinctions as the selection of words such as "in" rather than "on". Notwithstanding the significance that the courts have sometimes attached to these word choices, I doubt that parties who signed leases . . . should be taken to have intended to create an interest in land as opposed to a contractual right, as a result of such minuscule differences in language. . . . *Rather, it is more appropriate to consider the substance of the transaction (namely, what were the parties actually trying to achieve?) and to regard the words they have used from that perspective*. [Emphasis added.]

[48] Second, the Court of Appeal rooted its reasons in the practices and the exigencies of the oil and gas industry, as outlined above. At para. 29, the Court specifically endorsed the view of Hunt J. (as she then was), in *Scurry-Rainbow* that: “too rigid a reliance on common law principles that have developed in vastly different circumstances can lead to results that are out of touch with the realities of the industry and that deviate from the sorts of solutions needed by the affected parties”.

(iii) The Supreme Court's Ruling in *Dynex*

[49] The Supreme Court recognized it was required to resolve a controversy that pitted an "ancient common law rule against a common practice in the oil and gas industry", in the words of Major J., at para. 4.

[50] Justice Major summarized the Court's decision, at para. 21:

> In this appeal, to clarify the status of overriding royalties, the prohibition of the creation of an interest in land from an incorporeal hereditament is inapplicable. A royalty which is an interest in land may be created from an incorporeal hereditament such as a working interest or a *profit à prendre*, if that is the intention of the parties.

[51] He adopted the view, at para. 22, that Canadian common law should recognize that a "royalty interest" or an "overriding royalty interest" can be an interest in land if:

> 1) the language used in describing the interest is sufficiently precise to show that the parties intended the royalty to be a grant of an interest in land, rather than a contractual right to a portion of the oil and gas substances recovered from the land; and
>
> 2) the interest, out of which the royalty is carved, is itself an interest in land.

[52] The Supreme Court knew that its ruling changed the common law and cited, at para. 20, the principles for doing so, expressed in *Friedmann Equity Developments Inc. v. Final Note Ltd.*, 2000 SCC 34, [2000] 1 S.C.R. 842, at para. 42: to keep the common law in step with the evolution of society, to clarify a legal principle, or to resolve an inconsistency.

[53] Consistent with these principles, Major J. stated, at para. 18: “Given the custom in the oil and gas industry and the support found in case law, it is proper and reasonable that the law should acknowledge that an overriding royalty interest can, subject to the intention of the parties, be an interest in land.” He noted that the appellant “could not offer any convincing policy reasons for maintaining the common law prohibition on the creation of an interest in land from an incorporeal hereditament other than fidelity to common law principles.”

[54] Several points in the decision are of continuing importance. Justice Major noted, at para. 6: “For substantially the same reasons as the Court of Appeal, I conclude that overriding royalty interests can be interests in land.” He added, at para. 19, that he much preferred that Court’s “compelling insight into the evolution of the law”. In my view, this language gives continuing relevance to the approach and the ruling of the Court of Appeal of Alberta, especially its statement, at para. 73, that a court must “examine the parties' intentions from the agreement as a whole, along with the surrounding circumstances, as opposed to searching for some magic words.”

[55] I also note that Major J. approved the holding of Laskin J. in dissent in *Saskatchewan Minerals*. He noted, at para. 11, that: “The effect of Laskin J.'s reasons was to render inapplicable, at least insofar as overriding royalties, the common law rule against creating interests in land out of incorporeal interests.” He described Laskin J.’s holding, at para. 12: “[T]he intentions of the parties

judged by the language creating the royalty would determine whether the parties intended to create an interest in land or to create contractual rights only." This was the Supreme Court's ultimate holding in *Dynex*.

(3) The Motion Judge's Reasons

[56] The motion judge stated, at para. 30: "I conclude and find that the GORs do not run with the land or grant the holder of the GORs an interest in the lands over which Dianor holds the mineral rights." He determined that neither the expression of the parties' intent to do so, expressed in s. 4.1 of the Crown Land Agreement and the Patented Land Agreement that the GORs would run with the land, nor the registration of the GORs, was sufficient to convey any interest in land.

The motion judge stated, at para. 26:

> In my view, the situation with 235Co. is exactly described by Roberts J. [in *St. Andrew Goldfields Ltd. v. Newmont Canada Ltd*., [2009] O.J. No. 3266, aff'd 2011 ONCA 377, 282 O.A.C. 106.] 235Co. has no right to enter the property to explore and extract diamonds or other minerals. That right belongs to Dianor. The only right 235Co. … obtained under the agreements was to share in revenues produced from diamonds or other minerals extracted from the lands. It is clear from the agreements that the royalties were to be a percentage of the value of the diamonds or other metals and minerals. The interest, out of which the royalty is carved, is not [an] interest in land.

[57] The motion judge also referred, at para. 24, to the decision of the Court of Appeal of Quebec in *Anglo Pacific Group PLC c. Ernst & Young Inc.*, 2013 QCCA 1323, [2013] R.J.Q. 1264.

(4) The Principles Applied

[58] In this section of the reasons, I apply the *Dynex* test and then consider the errors made by the motion judge in his reasoning. It is important to note that the legal documents on which the appellant relies were prepared after *Dynex*.

(a) The *Dynex* test

[59] I repeat for convenience the test prescribed in *Dynex*, at para. 22, for determining whether a royalty right is an interest in land:

> 1) the language used in describing the interest is sufficiently precise to show that the parties intended the royalty to be a grant of an interest in land, rather than a contractual right to a portion of the oil and gas substances recovered from the land; and
>
> 2) the interest, out of which the royalty is carved, is itself an interest in land.

[60] Dianor's interests in the claims were working interests or *profits à prendre*, which the common law unquestionably recognizes as interests in land. The GORs were carved out of Dianor's interests. The second element in the *Dynex* test is plainly met in this case.

[61] In my view, the first element is also met. The Crown Land Agreement and the Patented Land Agreement expressly state that the parties intend the GOR to

create an interest in and to run with the land. To repeat for convenience, s. 4.1 of each of the Agreements states:

> 4.1. It is the intent of the parties hereto that the GOR shall constitute a covenant and an interest in land running with the Property and the Mining Claims and all successions thereof or leases or other tenures which may replace them, whether created privately or through governmental action, and including, without limitation, any leasehold interest.

[62] Apart from the plain language of the Agreements, in considering the surrounding context, the original GOR-holder took steps to register its royalty rights: notices of the GORs were registered on title to the patented lands under s. 71 of the *LTA* and on the unpatented mining claims under the *Mining Act*.

[63] I agree with the Court of Appeal of Alberta in *Dynex*, at para. 73, that the court must “examine the parties' intentions from the agreement as a whole, along with the surrounding circumstances”. Doing so in this instance makes plain their mutual intention to constitute the GORs as interests in land. It is express in the Agreements (based on the general principles of contractual interpretation), and the royalty rights-holder took care to register the interests on title.

[64] I observe that the same result was reached with less supporting evidence in *Blue Note Mining Inc. v. Fern Trust (Trustee of)*, 2008 NBQB 310, 337 N.B.R. (2d) 116, aff’d 2009 NBCA 17, 342 N.B.R. (2d) 151. One issue was whether a net profit interest constituted a continuing interest in land that bound the

purchaser. The motion judge determined that the agreement creating the interest did not contain the typical words “found in a conveyance of an interest in land”: at para. 34. The only relevant words were “grant” and “in the mine”. However, the motion judge held (and the Court of Appeal affirmed) that this was sufficient to grant an interest in land.

[65] The contractual terms are not necessarily determinative of whether an interest in land was intended; the language does not require magic words to demonstrate the parties’ intention. However, these words were present in the Agreements. In my view, the appellant’s GORs constitute interests in land that run with the land and are capable of binding the claims in the hands of a purchaser.

(b) The motion judge’s errors

[66] The motion judge made three legal errors in his analysis. The first error was that he did not examine the parties' intentions from the royalty agreements as a whole, along with the surrounding circumstances; this was the burden of the previous section of these reasons.

[67] The motion judge’s second error was in holding that in order to qualify as an interest in land, the royalty agreements had to give the appellant the right “to enter the property to explore and extract diamonds or other minerals”: at para. 26. The third error is in holding that: “The interest, out of which the royalty

is carved, is not [an] interest in land" because it is expressed in the Agreements as only a right "to share in revenues produced from diamonds or other minerals extracted from the lands." The latter two errors come from a misapprehension of the *Dynex* test. I will address them in turn.

(i) *Dynex* does not require a royalty rights-holder to have the right to enter the property to explore and extract resources in order to qualify as an interest in land

[68] In my view, a serious misapprehension has arisen in the application of *Dynex* in some cases, including some of those relied on by the motion judge.

[69] In *Dynex*, Major J. used some precise language from the trial decision of Virtue J. in *Vandergrift v. Coseka Resources Ltd.* (1989), 67 Alta. L.R. (2d) 17 (Q.B.), at p. 26, to specify the test as to when a royalty interest can be an interest in land. However, the Supreme Court did not adopt the reasoning in *Vandergrift*. There is good reason for this, because *Vandergrift* is inconsistent with *Dynex* in a critical way.

[70] In *Vandergrift*, the court did not conclude that the royalty right ran with the land but instead concluded that it was a purely contractual right, taking precisely the approach to the analysis that both the Court of Appeal of Alberta and the Supreme Court expressly disavowed in *Dynex*. Justice Virtue stated, at p. 28:

> One of the incidents of an interest in land one would expect to find in a royalty agreement intended to create an interest in land would be the right to the royalty holder to enter upon the lands to explore for and extract

> the minerals. A mere entitlement to an overriding royalty, without more, does not, in my view, carry with it the right to explore for oil and gas.

[71] The purpose of the Supreme Court and the Court of Appeal of Alberta in *Dynex* was to step away from the requirement that a royalty right had to have the incidents of a working interest or a *profit à prendre* in order to constitute an interest in land, so that royalty rights could play their useful role in financing the industry and spreading risk.

[72] Moreover, royalty rights-holders have no interest in working the land, nor do holders of the working interest or the *profit à prendre* want their operations to be subject to the working rights of a royalty rights-holder. This is precisely why the Alberta Court noted, at para. 43, that the royalty right was to be "non-operating", adding: "Non-operating interests include royalty interests, overriding royalty interests, production payments, net profit interests and carried interests."

[73] I agree with Professor Bankes, who observed, at p. 23 of his article: "I do not think that the Court should be taken to have endorsed either the particular approach taken by Justice Virtue or the actual result that he arrived at in that case." This built on his earlier comment criticizing *Vandergrift*, at p. 18, on the basis that it "seems to want to turn the royalty owner's passive interest into a working interest."

[74] I turn now to the motion judge's second error respecting the application of *Dynex*.

(ii) The language in which the calculation of the royalty right is expressed does not affect its characterization as an interest in land

[75] As noted, the motion judge held, at para. 26, that: "The interest, out of which the royalty is carved, is not [an] interest in land" because it is expressed in the Agreements as only a right "to share in revenues produced from diamonds or other minerals extracted from the lands." This takes the mistaken approach of the court in *Vandergrift*, which was rejected in *Dynex*.

[76] In my view, the motion judge's approach does not give due weight to the Supreme Court's approval, in *Dynex*, of the reasoning in the dissent of Laskin J. in *Saskatchewan Minerals*. Justice Laskin was a long-time property law professor before his judicial career. It is worth attending to his reasoning in *Saskatchewan Minerals*, where he made these observations, at pp. 724-725:

> In principle, a mining lessee whose holding is an interest in land in respect of which he has a royalty obligation should be able to grant or submit to an overriding royalty in respect of that interest to take effect as itself an interest in the lessee's holding.
>
> …
>
> This is not to say that every reservation or grant of a royalty creates an interest in land. The words in which it is couched may show that only a contractual right to money or other benefit is prescribed. However, if the analogy is to rent, then the fact that the royalty is fixed and calculable as a money payment based on production or as a share of production, or of production and sale, cannot alone be enough to establish it as merely a contractual interest. [Emphasis added.]

[77] In my view, the fact that the GORs are calculated on production does not defeat the clear intention of the parties that the GORs constitute interests in land.

The cases referred to by the motion judge

[78] I now turn to consider the cases on which the motion judge relied.

St. Andrew Goldfields

[79] The first is *St. Andrew Goldfields*. Barrick Gold Corp. sold a mine to Newmont Canada Ltd. Part of the consideration was a net smelter return royalty agreement in Barrick's favour. Newmont was also required to obtain Barrick's consent to transfer any interest in the mine, failing which it would continue to be responsible for the royalty. Newmont later sold the mine to St. Andrew Goldfields Ltd. without first seeking Barrick's consent.

[80] The situation was explained by Rouleau J.A., at para. 4:

> As found by the trial judge, Newmont Canada had misread the provisions in the Barrick royalty agreement, erroneously believing that the royalty was an insignificant flat rate of 0.013% NSR. In fact, it was a sliding scale royalty obligation that increased substantially as the price of gold increased. Believing that the low 0.013% NSR was an error on Barrick's part, Newmont Canada did not question Barrick on the provision nor did it seek to modify or change the clause.

[81] The agreement between Newmont and St. Andrew Goldfields reflected the flat royalty rate but did not contain the multiplier.

[82] Because Newmont did not get Barrick's approval for the transfer to St. Andrew Goldfields, it continued to remain liable to Barrick under the original agreement. It appeared that Newmont had made a unilateral error in its interpretation of the royalty provision in its agreement with Barrick and omitted the escalator in its agreement with St. Andrew Goldfields. The issue was whether St. Andrew Goldfields was nonetheless required to pay the higher royalty rate because the royalty interest ran with the land.

[83] The trial judge's ruling was set out at para. 11:

> I hold that the Barrick royalty agreement is clear and unambiguous, that Newmont alone is responsible under the Barrick royalty agreement for payment of the royalties on net smelter returns for gold, silver and other minerals to [Barrick's assignee of the royalty rights] Royal Gold, and that St. Andrew is required to indemnify Newmont up to the flat rate of .013% of the net smelter returns for gold, silver and other minerals.

[84] Newmont argued that St. Andrew Goldfields was obliged to pay the higher royalty rate because the royalty agreement constituted an interest in land. The trial judge followed the *Vandergrift* approach. She observed, at para. 104, that under the Barrick royalty agreement: "[T]he royalty holder retains no interest in or control over the kind of operations or activities that the owner of the property may carry out".

[85] Further, although there was a provision that notice of the agreement could be registered, she held, at para. 105, that this was "not sufficient by itself to

demonstrate that the parties intended to create an interest in land." Although the royalty agreement permitted Barrick to register the agreement on title, it had not done so.

[86] However, the case did not turn on whether the royalty agreement created an interest in land that bound St. Andrew Goldfields, nor was that holding appealed. The appeal turned on the legal interpretation of the transactional documents and the effect of Newmont's failure to secure Barrick's consent to the sale of the mine. In this court, Rouleau J.A. noted, at para. 31:

> Faced with two contractual interpretations, the trial judge carefully considered the facts and the agreements and concluded that, correctly interpreted, the agreements provided that St. Andrew agreed to an indemnity of a royalty obligation stated to be 0.013% NSR [the lower royalty rate]. This is consistent with the many references in both the Newmont Canada-Holloway and Newmont Canada-Holloway-St. Andrew agreements to the amount of the Barrick royalty obligation being 0.013% NSR.

[87] In the result, St. Andrew Goldfields was obliged to indemnify Newmont for the lower net smelter return, while Newmont was obliged to pay the net smelter return at the higher rate to Royal Gold, Barrick's assignee of the royalty rights. In my view, the decision in *St. Andrew Goldfields* has no application to this appeal.

Anglo Pacific

[88] Nor does the Court of Appeal of Quebec's decision in *Anglo Pacific* assist the respondent. In *Anglo Pacific*, the Court looked at the royalty agreement to

determine whether it assigned the attributes of ownership to the royalty holder. The agreement did not assign the attributes of ownership but only the right of the royalty holder to receive payment. The Court held that, because the royalty agreement did not give the royalty holder the right to enter, enjoy, or dispose of the property, the holder did not have a real right in land: at paras. 63, 77-81.

[89] Although the facts in *Anglo Pacific* are similar to this case, the Court did not apply the common law framework from *Dynex* but relied exclusively on the civil law of Quebec. A description of the civil law concepts applied by the Court shows they have no application in common law jurisdictions.

[90] The Quebec Court held that to have a “real right” in land pursuant to the *Civil Code of Quebec*, one must have ownership: at paras. 53, 60. Ownership includes corporeal or incorporeal property: at para. 53. Thus, the owner of a mining claim is the owner of a “real right” in land: at paras. 70-71. However, in order to have ownership, one must have the attributes of ownership: at para. 53. The attributes of ownership under civil law include: the right of use (*usus*), of enjoyment (*fructus*), of free disposition (*abusus*), and “the ability to make one’s own that which the property generates and that which is attached to it” (*accessio* – for example, buildings on the land or deposits in the land): at paras. 43, 53-54.

[91] The owner of land can “dismember” his or her ownership by dividing the attributes of ownership with one or more third parties, who then acquire an

interest in land: at paras. 54-55. For example, the holder may have the right to temporarily use and enjoy the property that belongs to another (*usufruct*). This transmits to the holder of the dismemberment the right of use (*usus*) and enjoyment (*fructus*) for a certain time, and the true owner retains the right to dispose of the land (*abusus*) and the *accessio*: at para. 55.

[92] The party to whom a dismemberment is granted will have a real right in land if he or she has the right to share in one of the above-noted attributes of ownership. Without such a right, the party has no "direct right on property": at para. 60. For example, the state "dismembers" its ownership rights in favour of a party when it assigns a mining claim to that party: at para. 70. The holder of a mining claim is the holder of a dismemberment and has a real right in land.

[93] Although there are similarities between the civil law concepts and the *profit à prendre* under the common law, there are differences. Most importantly, the Court of Appeal of Quebec did not apply the common law framework from *Dynex* but relied exclusively on the civil law. *Dynex* is the governing law in Ontario; the decision of the Court of Appeal of Quebec in *Anglo Pacific* has no bearing on this case.

Conclusion on the issue of whether the GORs constitute interests in land

[94] I began my analysis by noting that the central issue in this case is whether the GORs constitute interests in land within the meaning of the law outlined by

the Supreme Court in *Dynex*. For the reasons set out above, I conclude that the GORs are interests in land, contrary to the holding of the motion judge. In my view the deferential approach called for by the Supreme Court in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633 has no application to this case in view of the motion judge's legal errors.

[95] While the motion judge did purport to adjudicate the appellant's GOR claims, his erroneous determination that it was not an interest in land raises potential issues respecting the vesting order.

E. THE THIRD ISSUE: DID THE MOTION JUDGE HAVE JURSIDICTION TO ISSUE A VESTING ORDER THAT EXTINGUISHED THE GORS?

[96] In this section of the reasons, I consider, first, the motion judge's reasons in order to set the context and then describe the positions of the parties regarding his jurisdiction to vest out the GORs. I next turn to the governing principles and then to their application.

[97] The context for this issue is set by the conclusions I reached on the earlier issue of mootness. Because the GORs are interests in land, the appeal is not necessarily moot, particularly if the Superior Court did not have jurisdiction to issue the vesting order in these circumstances. The determination of this issue in 235Co's favour could entitle it to a remedy.

(1) The Motion Judge's Decision

[98] The motion judge held, at para. 37, that:

> In this case, the BIA and the *Courts of Justice Act* give the Court that jurisdiction to order the property to be sold and on what terms. Under the receivership in this case, Third Eye is entitled to be the purchaser of the assets pursuant to the bid process authorized by the Court.

[99] He added, at para. 38: "I conclude that I do have the jurisdiction to grant a vesting order of the assets to be sold to Third Eye on such terms as are just." Pursuant to the order, the receiver allocated $400,000 in cash as compensation for the extinguishment of Ontario royalties in favour of the appellant and Essar Steel Algoma Inc. The appellant was paid $250,000 for its GORs, and the Court-appointed monitor of Essar was paid $150,000 for its royalty. The motion judge made the payment to 235Co a term of the order, explaining at para. 39:

> In my view, it is appropriate and just that a vesting order in the usual terms be granted to Third Eye on the condition that $250,000 be paid to 235Co. or whatever entity Mr. Leadbetter directs the payment to be made. That is higher than the mid-point of the range of values determined by Dr. Roscoe.

[100] The motion judge expressed his opinion, at para. 40, that the Court would have been authorized to make the vesting order disposing of the royalty rights of 235Co "whether the royalty rights were or were not an interest in land."

(2) The Positions of the Parties

[101] The appellant argued that if the royalty rights run with the land, then the motion judge had no authority under s. 243 of the *BIA* or s. 100 of the *CJA* to vest the mining claims in Third Eye pursuant to the sale process without leaving the royalty rights in place.

[102] The respondent supported the motion judge's view that he had authority to make the vesting order, free of the royalty rights.

(3) The Issue

[103] The issue is whether the motion judge, in the circumstances of this case – acting under s. 100 of the *CJA* and s. 243 of the *BIA*, its inherent jurisdiction, or the wording of the vesting order – had jurisdiction to approve a sale that vested out 235Co's proprietary interest.

(a) The Context

[104] The motion judge noted that the sale of the mining claims was carried out in accordance with a court-approved bid process under ss. 100 and 101 of the *CJA* and s. 243 of the *BIA*, working together. It is important to reiterate that the motion judge was not acting under s. 65.13(7) of the *BIA*; s. 36(6) of the *CCAA*; ss. 66(1.1) and 84.1 of the *BIA*; or s. 11.3 of the *CCAA*. Neither the provisions of the *CCAA* nor the proposal provisions of the *BIA* apply to this case.

[105] Sections 100 and 101 of the *CJA* provide:

> 100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.
>
> 101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.
>
> (2) An order under subsection (1) may include such terms as are considered just.

[106] Section 243(1) of the *BIA* provides:

> 243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:
>
> > (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
> >
> > (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
> >
> > (c) take any other action that the court considers advisable.

[107] These provisions do not expressly authorize a court to take real property out of the hands of a third party.

(b) Does the Superior Court's inherent jurisdiction give jurisdiction to grant a vesting order in these circumstances?

[108] The Superior Court of Justice has all of the jurisdiction, power, and authority historically exercised by courts of common law and equity in England and Ontario, as provided in s. 11(2) of the *CJA*. This power includes making vesting orders: *CJA*, at s. 100. However, this Court has interpreted these provisions as conferring no greater authority on the Superior Court than was previously recognized at equity.

[109] The leading text – Houlden, *Bankruptcy and Insolvency Law of Canada*, at Part XI, L§21 – notes:

> A vesting order should only be granted if the facts are not in dispute and there is no other available or reasonably convenient remedy; or in exceptional circumstances where compliance with the regular and recognized procedure for sale of real estate would result in an injustice. In a receivership, the sale of the real estate should first be approved by the court. The application for approval should be served upon the registered owner and all interested parties. If the sale is approved, the receiver may subsequently apply for a vesting order, but a vesting order should not be made until the rights of all interested parties have either been relinquished or been extinguished by due process. [Citations omitted.]

[110] The leading judicial authority in Ontario is *Trick v. Trick* (2006), 81 O.R. (3d) 241 (C.A.), leave to appeal refused, [2006] S.C.C.A. No. 388. In that case, Lang J.A. stated, at para. 19, that s. 100 of the *CJA*:

> [P]rovides a court with jurisdiction to vest property in a person but only if the court also possesses the "authority to order [that the property] be disposed of, encumbered or conveyed". Thus, s. 100 only provides a mechanism to give the applicant the ownership or possession of property to which he or she is otherwise entitled; it does not provide a free standing right to property simply because the court considers that result equitable. [Footnote omitted. Emphasis added.]

[111] At equity and common law, a party must have a valid and independent entitlement to possession or ownership in order for a court to issue a vesting order that extinguishes a third party's real property interest. Several cases have held that the inherent jurisdiction of the Superior Courts does not confer the power to take real property from third parties simply because the court considers it equitable to other stakeholders. Rather, it gives courts authority to bring about a transfer of title to a party who is otherwise or independently entitled to it. See also *2022177 Ontario Inc. v. Toronto Hanna Properties Ltd.*, 203 O.A.C. 220, at para 49. See also *Clarkson Co. v. Credit foncier franco canadien* (1985), 57 C.B.R. (N.S.) 283 (Sask. C.A.), at p. 284.

[112] Although this court has referred obliquely to this issue in several cases, we have never faced it squarely.

(c) The Policy Context

[113] The policy context is well set out by Wilton-Siegel J. in *1565397 Ontario Inc., Re*, [2009] O.J. No. 2596, 54 C.B.R. (5th) 262 (S.C.). In that case, a numbered company delivered an undertaking at closing to later transfer part of

the real property to two parties. The company became insolvent, and a receiver was appointed. Although the undertakings were not registered on title until after the appointment of the receiver, the relevant parties had actual notice of them. The receiver attempted to sell the property free of the undertakings. The Court refused to permit the sale. Justice Wilton-Siegel stated, at para. 60:

> I know of no law that permits a court to authorize a receiver to terminate a proprietary interest in land in such manner. The effect of any such extinguishment … amounts to expropriation of the respondents' assets in favour of subordinate or unsecured creditors.

[114] He added, at para. 67: "I do not think the Court has the authority to order a sale" of the third party's proprietary interests "on the basis proposed" by the receiver. Among the reasons he gave for refusing a vesting order, at para 68, was that the third party's interest was not subject to the receivership:

> Such interests in the Property reside in the respondents whose property is not subject to the receivership. … [The receiver] cannot have taken possession of, or otherwise have any interest in, the respondents' interests in the Property, regardless of the terms of the Receivership Order because the Order extends only to the assets of [the debtor]. As such, the [receiver] has no authority under the Receivership Order to sell the interests of the respondents. Nor does the Court have the authority to grant such an order in the absence of the appointment of a receiver over the respondents' property and assets.

[115] See also *Blue Note Caribou Mines Inc., Re*, 2010 NBQB 91, 356 N.B.R. (2d) 236, leave to appeal to N.B.C.A. refused, [2010] N.B.J. No. 267.

(4) The Context for Further Submissions

[116] There are several situations in which courts have considered vesting orders that vest out a third party's proprietary interest. I address several, and there may be others.

(a) The "narrow circumstances" exception

[117] Several cases have held that in some narrow circumstances, courts may issue a vesting order that extinguishes third party interests. Such circumstances appear to include situations where doing so would provide added certainty, and there is no evidence of competing proprietary interests: *BTR Global Opportunity Trading Ltd. v. RBC Dexia Investor Services Trust*, 2012 ONSC 1868, at paras. 5, 18, 20-21.

[118] What are the narrow circumstances in which a Superior Court judge may issue a vesting order under s. 100 of the *CJA* that vests out a third party's proprietary interest, when s. 65.13(7) of the *BIA*; s. 36(6) of the *CCAA*; ss. 66(1.1) and 84.1 of the *BIA*; or s. 11.3 of the *CCAA* do not apply?

(b) The equities

[119] Courts have also considered the "equities" in determining whether to issue a vesting order. Although the term, "equities", is an ambiguous word, the vesting order cases have tended to use it to describe their work in establishing priorities among interests. See, for example, *Meridian Credit Union v. 984 Bay Street Inc.*,

[2005] O.J. No. 3707 (S.C.), rev'd [2006] O.J. No. 1726 (C.A.), and [2006] O.J. No. 3169 (S.C.). See also *Romspen Investment Corp. v. Woods Property Development Inc*., 2011 ONSC 3648, 75 C.B.R. (5th) 109, rev'd 2011 ONCA 817, 286 O.A.C. 189; and *Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd.*, 2012 ONSC 4816, 99 C.B.R. (5th) 120.

(c) Have commercial practices expanded the court's jurisdiction?

[120] Finally, under the rubric of "equitable considerations", s.100 of the *CJA*, and the Superior Court's inherent jurisdiction, has the permissible reach of the vesting order grown to permit a court to vest out virtually any interests in an asset? See, for example, David Bish and Lee Cassey, "Vesting Orders Part 1: The Origin and Development" (2015) 32(4) Nat. Insol. Rev. 41; and "Vesting Orders Part 2: The Scope of Vesting Orders" (2015) 32(5) Nat. Insol. Rev. 53.

(5) The Question Requiring Additional Argument

[121] To summarize the discussion, the question to be addressed in additional argument before this panel is: Whether and under what circumstances and limitations (including the ones enumerated above) a Superior Court judge has jurisdiction to extinguish a third party's interest in land using a vesting order, under s. 100 of the *CJA* and s. 243 of the *BIA*, where s. 65.13(7) of the *BIA*; s. 36(6) of the *CCAA*; ss. 66(1.1) and 84.1 of the *BIA*; or s. 11.3 of the *CCAA* do not apply?

[122] I turn now to the issue of remedy.

F. THE FOURTH ISSUE: REMEDY

[123] Regrettably, the parties did not fully address what this court should do by way of remedy if it were to allow the appeal.

[124] The appellant effectively seeks rectification of the register to reflect the GORs. I note that in *Sheard v. Peacock*, 2012 ONSC 4237, the motion judge treated the application to set aside the vesting order as an application for rectification.

[125] As noted earlier, even though registration of the vesting order has effected a conveyance of the mining claims, the appellant is not necessarily without a remedy. As Blair J.A. observed in *Regal Constellation*, an aggrieved party like the appellant may seek a remedy under the regime established by the *LTA*.

[126] Because this court has found that 235Co has an interest in land, it could be entitled to rectification of the register under ss. 159 and 160 of the *LTA*, which provide:

> 159. Subject to any estates or rights acquired by registration under this Act, where a court of competent jurisdiction has decided that a person is entitled to an estate, right or interest in or to registered land or a charge and as a consequence of the decision the court is of [the] opinion that a rectification of the register is required, the court may make an order directing the register to be rectified in such manner as is considered just.

> 160. Subject to any estates or rights acquired by registration under this Act, if a person is aggrieved by an entry made, or by the omission of an entry from the register, or if default is made or unnecessary delay takes place in making an entry in the register, the person aggrieved by the entry, omission, default or delay may apply to the court for an order that the register be rectified, and the court may either refuse the application with or without costs to be paid by the applicant or may, if satisfied of the justice of the case, make an order for the rectification of the register.

[127] However, providing a remedy gives rise to several difficulties. First, there is no information before the court on whether an innocent third party acquired an interest from Third Eye after the vesting order was registered, which would debar a remedy.

[128] Second, in its Notice of Appeal, the appellant requested this court to vary the vesting order to remove the appellant's interest from the schedule of claims to be discharged from title of the property and to add its interests to the schedule of permitted encumbrances. The respondent submitted that this is not possible because its accepted Offer to Purchase was "predicated on the elimination of the GORs." The respondent argued that "[i]t was not open to the Motions Judge to impose additional terms on the Transaction that were not agreed to by the parties, and 235Co cannot ask for those terms to be imposed on appeal." I do not know whether the respondent would want to press this position in an argument about the appropriate remedy.

[129] In the circumstances, it would not be prudent to exercise authority under s.134 of the *CJA* and ss. 159 and 160 of the *LTA* to rectify title without hearing argument from the parties on whether additional evidence is necessary, how it should be received, and on any other remedial issues arising from this decision.

G. DISPOSITION

[130] The next phase of the appeal, assuming the parties choose to pursue it, requires case management to coordinate written submissions on the issues raised in these reasons and to consider the necessity of oral submissions, and I would refer the parties to the Registrar to make the necessary arrangements.

Released:

"MAR 15 2018"
"SP"

"P. Lauwers J.A."
"I agree S.E. Pepall J.A."
"I agree Grant Huscroft J.A."

This is Exhibit "S" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation,
Expires March 16, 2024

Bank of Montreal *Appellant*

v.

Enchant Resources Ltd. and D. S. Willness *Respondents*

Banque de Montréal *Appelante*

c.

Enchant Resources Ltd. et D. S. Willness *Intimés*

INDEXED AS: BANK OF MONTREAL *v.* DYNEX PETROLEUM LTD.

Neutral citation: 2002 SCC 7.

File No.: 27766.

Hearing and judgment: November 9, 2001.

Reasons delivered: January 24, 2002.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie and LeBel JJ.

RÉPERTORIÉ : BANQUE DE MONTRÉAL *c.* DYNEX PETROLEUM LTD.

Référence neutre : 2002 CSC 7.

N^o^ du greffe : 27766.

Audition et jugement : 9 novembre 2001.

Motifs déposés : 24 janvier 2002.

Présents : Le juge en chef McLachlin et les juges Gonthier, Iacobucci, Major, Bastarache, Binnie et LeBel.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Commercial law — Oil and gas industry — Overriding royalties — Whether overriding royalties arising from working interest capable of being interest in land.

The appellant Bank was a secured creditor of D, a corporation in liquidation. The trustee in bankruptcy wanted to sell all the oil and gas properties of D. One issue of concern was whether any such sale would be subject to overriding royalties arising out of the working interest held by D. Also, the respondents held overriding royalties and claimed priority over the Bank, as to the assets of D, because their interests, as protected by caveats filed in a land registration office, preceded the Bank's loans to D and its predecessors. The caveats claimed an interest in D's working interest as a result of services performed for D and/or its predecessors. The chambers judge granted the Bank's application for a preliminary determination finding that an overriding royalty interest cannot be an interest in land. The Court of Appeal set aside that decision, holding that overriding royalty interests can, subject to the intention of the parties, be interests in land.

Held: The appeal should be dismissed.

EN APPEL DE LA COUR D'APPEL DE L'ALBERTA

Droit commercial — Industrie pétrolière et gazière — Redevances dérogatoires — Une redevance dérogatoire issue d'une participation directe peut-elle constituer un intérêt foncier?

La Banque appelante était un créancier garanti de D, société en voie de liquidation. Le syndic de faillite voulait vendre tous les avoirs gaziers et pétroliers de D. Se posait donc notamment la question de savoir si la vente serait conclue sous réserve des redevances dérogatoires provenant de la participation directe détenue par D. Par ailleurs, les intimés étaient titulaires de redevances dérogatoires et prétendaient prendre rang avant la Banque quant aux avoirs de D, parce que leurs intérêts, protégés par des oppositions déposées à un bureau d'enregistrement foncier, étaient antérieurs aux prêts consentis par la Banque à D et à ses prédécesseurs. Les oppositions faisaient valoir un intérêt dans la participation directe détenue par D par suite de la fourniture de services à D ou à ses prédécesseurs. Le juge en chambre a accueilli la demande présentée par la Banque en vue de faire statuer de façon préliminaire qu'un droit de redevance dérogatoire ne pouvait constituer un intérêt foncier. La Cour d'appel a infirmé cette décision, statuant qu'un droit de redevance dérogatoire peut constituer un intérêt foncier, à condition que telle soit l'intention des parties.

Arrêt : Le pourvoi est rejeté.

The common law prohibition against the creation of an interest in land from an incorporeal hereditament is inapplicable to the oil and gas industry given its practices and the support found in the law. A royalty which is an interest in land may be created from an incorporeal hereditament such as a working interest or a *profit à prendre* if that is the intention of the parties.

Cases Cited

Referred to: *Berkheiser v. Berkheiser*, [1957] S.C.R. 387; *Saskatchewan Minerals v. Keyes*, [1972] S.C.R. 703; *Scurry-Rainbow Oil Ltd. v. Galloway Estate* (1993), 138 A.R. 321, aff'd (1994), 157 A.R. 65; *Canco Oil and Gas Ltd. v. Saskatchewan* (1991), 89 Sask. R. 37; *St. Lawrence Petroleum Ltd. v. Bailey Selburn Oil & Gas Ltd.*, [1963] S.C.R. 482; *Vanguard Petroleums Ltd. v. Vermont Oil & Gas Ltd.*, [1977] 2 W.W.R. 66; *Isaac v. Cook* (1982), 44 C.B.R. 39; *Guaranty Trust Co. v. Hetherington* (1987), 50 Alta. L.R. (2d) 193, aff'd in part [1989] 5 W.W.R. 340; *Vandergrift v. Coseka Resources Ltd.* (1989), 67 Alta. L.R. (2d) 17; *Nova Scotia Business Capital Corp. v. Coxheath Gold Holdings Ltd.* (1993), 128 N.S.R. (2d) 118; *Friedmann Equity Developments Inc. v. Final Note Ltd.*, [2000] 1 S.C.R. 842, 2000 SCC 34.

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APPEAL from a judgment of the Alberta Court of Appeal (1999), 74 Alta. L.R. (3d) 219, 255 A.R. 116, 220 W.A.C. 116, 182 D.L.R. (4th) 640, 2 B.L.R. (3d) 58, 15 C.B.R. (4th) 5, 15 P.P.S.A.C. (2d) 175, [2000] 2 W.W.R. 693, [1999] A.J. No. 1463 (QL), 1999 ABCA 363, reversing a judgment of the Court of Queen's Bench (1995), 39 Alta. L.R. (3d) 66, [1996] 6 W.W.R. 461, 11 P.P.S.A.C. (2d) 291, [1995] A.J. No. 1279 (QL). Appeal dismissed.

Richard B. Jones, for the appellant.

L'interdiction reconnue en common law de créer un intérêt foncier à partir d'un héritage incorporel est inapplicable à l'industrie gazière et pétrolière, étant donné ses pratiques et l'appui fourni par la jurisprudence. Une redevance qui est un intérêt foncier peut être créée à partir d'un héritage incorporel tel qu'une participation directe ou un profit à prendre, si telle est l'intention des parties.

Jurisprudence

Arrêts mentionnés : *Berkheiser c. Berkheiser*, [1957] R.C.S. 387; *Saskatchewan Minerals c. Keyes*, [1972] R.C.S. 703; *Scurry-Rainbow Oil Ltd. c. Galloway Estate* (1993), 138 A.R. 321, conf. par (1994), 157 A.R. 65; *Canco Oil and Gas Ltd. c. Saskatchewan* (1991), 89 Sask. R. 37; *St. Lawrence Petroleum Ltd. c. Bailey Selburn Oil & Gas Ltd.*, [1963] R.C.S. 482; *Vanguard Petroleums Ltd. c. Vermont Oil & Gas Ltd.*, [1977] 2 W.W.R. 66; *Isaac c. Cook* (1982), 44 C.B.R. 39; *Guaranty Trust Co. c. Hetherington* (1987), 50 Alta. L.R. (2d) 193, conf. en partie par [1989] 5 W.W.R. 340; *Vandergrift c. Coseka Resources Ltd.* (1989), 67 Alta. L.R. (2d) 17; *Nova Scotia Business Capital Corp. c. Coxheath Gold Holdings Ltd.* (1993), 128 N.S.R. (2d) 118; *Friedmann Equity Developments Inc. c. Final Note Ltd.*, [2000] 1 R.C.S. 842, 2000 CSC 34.

Doctrine citée

Davies, G. J. « The Legal Characterization of Overriding Royalty Interests in Oil and Gas » (1972), 10 *Alta. L. Rev*. 232.

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Ellis, W. H. « Property Status of Royalties in Canadian Oil and Gas Law » (1984), 22 *Alta. L. Rev*. 1.

Newman, J. Forbes. « Can a Gross Overriding Royalty Be an Interest in Land », in Insight Educational Services, *Oil & Gas Agreements Update*. Mississauga, Ont. : Insight Press, 1989.

POURVOI contre un arrêt de la Cour d'appel de l'Alberta (1999), 74 Alta. L.R. (3d) 219, 255 A.R. 116, 220 W.A.C. 116, 182 D.L.R. (4th) 640, 2 B.L.R. (3d) 58, 15 C.B.R. (4th) 5, 15 P.P.S.A.C. (2d) 175, [2000] 2 W.W.R. 693, [1999] A.J. No. 1463 (QL), 1999 ABCA 363, infirmant un jugement de la Cour du Banc de la Reine (1995), 39 Alta. L.R. (3d) 66, [1996] 6 W.W.R. 461, 11 P.P.S.A.C. (2d) 291, [1995] A.J. No. 1279 (QL). Pourvoi rejeté.

Richard B. Jones, pour l'appelante.

James C. Crawford, *Q.C.*, *Frank R. Dearlove* and *Scott H. D. Bower*, for the respondents.

The judgment of the Court was delivered by

MAJOR J. —

I. Introduction

1 This appeal arises from an application made by the appellant Bank of Montreal before the chambers judge in the Alberta Court of Queen's Bench for a determination that, as a matter of law, an overriding royalty is incapable of being an interest in land. The application was opposed by several defendants including the respondents in this Court, Enchant Resources Ltd. ("Enchant") and D. S. Willness ("Willness"), each holders of overriding royalties who claim their interests to be interests in land. The learned chambers judge allowed the Bank's application which the Alberta Court of Appeal reversed, holding that an overriding royalty is capable of being an interest in land. This appeal to the Supreme Court of Canada was dismissed with reasons to follow.

II. Facts

2 The material filed and submissions of counsel indicated that royalty arrangements are common forms of arranging exploration and production in the oil and gas industry in Alberta. Typically, the owner of minerals *in situ* will lease to a potential producer the right to extract such minerals. This right is known as a working interest. A royalty is an unencumbered share or fractional interest in the gross production of such working interest. A lessor's royalty is a royalty granted to (or reserved by) the initial lessor. An overriding royalty or a gross overriding royalty is a royalty granted normally by the owner of a working interest to a third party in exchange for consideration which could include, but is not limited to, money or services (e.g., drilling or geological surveying) (G. J. Davies, "The Legal Characterization of Overriding Royalty Interests in Oil and Gas" (1972), 10 *Alta. L. Rev.* 232, at p. 233). The rights and obligations

James C. Crawford, *c.r.*, *Frank R. Dearlove* et *Scott H. D. Bower*, pour les intimés.

Version française du jugement de la Cour rendu par

LE JUGE MAJOR —

I. Introduction

Le présent pourvoi vise une demande que la Banque de Montréal, appelante, a présentée à un juge de la Cour du Banc de la Reine de l'Alberta siégeant en chambre afin qu'il statue, en droit, qu'une redevance dérogatoire ne peut constituer un intérêt foncier. Plusieurs défendeurs se sont opposés à la demande. Au nombre des opposants figuraient les intimés devant notre Cour, Enchant Resources Ltd. (« Enchant ») et D. S. Willness (« Willness »), titulaires de redevances dérogatoires qui prétendaient détenir un intérêt foncier. Le juge a fait droit à la demande de la Banque. La Cour d'appel de l'Alberta a infirmé cette décision, statuant qu'une redevance dérogatoire peut être un intérêt foncier. Notre Cour a rejeté le pourvoi, avec motifs à suivre.

II. Les faits

Les pièces produites et les plaidoiries des avocats révèlent que les arrangements en matière de redevances sont de pratique courante en Alberta dans le secteur de l'exploration et de la production pétrolières et gazières. D'ordinaire, le propriétaire des minéraux *in situ* donne à bail à un producteur potentiel le droit d'extraire ces minéraux. Pour désigner ce droit, on utilise l'expression « participation directe ». Une redevance est une part ou participation fractionnaire non grevée dans la production brute issue de cette participation directe. La redevance du bailleur est une redevance accordée au bailleur initial (ou qu'il se réserve). Une redevance dérogatoire ou redevance dérogatoire brute est une redevance accordée normalement par le titulaire d'une participation directe à un tiers en échange d'une contrepartie qui peut comprendre notamment une somme d'argent ou des services (par exemple, le forage ou les études géologiques) (G. J. Davies,

of the two types of royalties are identical. The only difference is to whom the royalty was initially granted.

The appellant Bank of Montreal was a secured creditor of Dynex Petroleum Ltd. ("Dynex"), a corporation in liquidation. The trustee in bankruptcy wanted to sell all the oil and gas properties of Dynex. One issue was whether any such sale would be subject to overriding royalties arising out of the working interest held by Dynex. Also, there were several competing claims against the appellant, which by the time of this appeal had narrowed to the overriding royalties of the respondents Enchant and Willness, who claimed a preference by way of a caveat filed in the South Alberta Land Registration District, claiming an interest in Dynex's working interest as a result of services performed for Dynex and/or its predecessors. The respondents claimed their royalty rights comprised interests in land and claimed priority over the appellant because their interests, as protected by caveats, preceded the appellant's loans to Dynex and its predecessors. The appellant submitted that at common law an interest in land could not arise from an incorporeal hereditament and therefore the respondents' overriding royalties (which arose from a working interest, an incorporeal hereditament) did not rank higher in priority than the appellant's security interest.

This case pits this ancient common law rule against a common practice in the oil and gas industry. The Court is asked to resolve the apparent conflict.

III. Judicial History

The appellant applied to the Court of Queen's Bench of Alberta ((1995), 39 Alta. L.R. (3d) 66) for a preliminary determination that the overriding royalty interests do not constitute interests in land. The learned chambers judge, Rooke J. in allowing the application held at para. 3 that:

« The Legal Characterization of Overriding Royalty Interests in Oil and Gas » (1972), 10 *Alta. L. Rev.* 232, p. 233). Les mêmes droits et obligations se rattachent aux deux types de redevance. Seul les différencie le fait que la redevance n'est pas accordée initialement à la même personne.

3 La Banque de Montréal, appelante, était un créancier garanti de Dynex Petroleum Ltd. (« Dynex »), société en voie de liquidation. Le syndic de faillite voulait vendre tous les avoirs gaziers et pétroliers de Dynex. La question se posait donc de savoir si la vente serait conclue sous réserve des redevances dérogatoires provenant de la participation directe détenue par Dynex. De plus, l'appelante se voyait opposer plusieurs réclamations concurrentes dont ne subsistaient plus, au moment du présent pourvoi, que les redevances dérogatoires des intimés Enchant et Willness, qui revendiquaient un rang prioritaire en invoquant une opposition déposée au bureau d'enregistrement foncier du district du sud de l'Alberta, faisant valoir un intérêt dans la participation directe détenue par Dynex par suite de la fourniture de services à Dynex ou à ses prédécesseurs. Les intimés soutenaient que leurs droits de redevance comportaient des intérêts fonciers et prétendaient prendre rang avant l'appelante parce que leurs intérêts protégés par les oppositions étaient antérieurs aux prêts consentis par l'appelante à Dynex et à ses prédécesseurs. L'appelante a soutenu que, en common law, un intérêt foncier ne pouvait dériver d'un héritage incorporel et que, partant, les redevances dérogatoires des intimés (dérivées d'une participation directe et, donc, d'un héritage incorporel) ne prenaient pas rang avant la sûreté qu'elle détenait.

4 La présente affaire oppose cette ancienne règle de common law et une pratique courante du secteur pétrolier et gazier. La Cour est appelée à trancher ce conflit apparent.

III. Historique des procédures judiciaires

5 L'appelante a demandé à la Cour du Banc de la Reine de l'Alberta ((1995), 39 Alta. L.R. (3d) 66) de statuer, par une décision préliminaire, que les droits de redevance dérogatoire ne constituaient pas des intérêts fonciers. Le juge Rooke siégeant en chambre a fait droit à la demande en ces termes, au par. 3 :

. . . as a matter of law, a lessee of an oil and gas lease (which is a profit à prendre), which is in itself an interest in land, obtained from a lessor (whether the Crown or freehold), cannot in law pass on an interest in land to a third party.

He also concluded that if an interest in land could issue from a *profit à prendre*, which he held that it could not, the matter could not be determined summarily as evidence would be necessary to examine the language of the instruments and the intentions of the parties.

6 After a review of policy considerations, industry practice and Canadian and United States case law, the Alberta Court of Appeal ((1999), 74 Alta. L.R. (3d) 219) concluded that overriding royalty interests can constitute interests in land if intended by the parties. For substantially the same reasons as the Court of Appeal, I conclude that overriding royalty interests can be interests in land.

IV. Issue

7 Can an overriding royalty issued from a working interest (an incorporeal hereditament) be an interest in land?

V. Analysis

8 At common law, an interest in land could issue from a corporeal hereditament but not from an incorporeal hereditament. "Corporeal hereditament" is defined by *The Dictionary of Canadian Law* (2nd ed. 1995) as:

1. A material object in contrast to a right. It may include land, buildings, minerals, trees or fixtures. . . .

2. Land. . . .

"Incorporeal hereditament" is defined as:

1. "(A right) . . . in land, which (includes) such things as rent charges, annuities, easements, profits à prendre, and so on.". . .

[TRADUCTION] . . . en droit, le preneur à bail d'une concession pétrolière et gazière (qui est un profit à prendre), qui est en soi un intérêt foncier, obtenue d'un bailleur (location de la Couronne ou location à bail franche), ne peut, en common law, transmettre un intérêt foncier à un tiers.

Il a également conclu que, si un intérêt foncier pouvait dériver d'un profit à prendre — solution qu'il a écartée —, la question ne pourrait être tranchée sommairement, car une preuve serait nécessaire aux fins de l'examen des termes des instruments et de l'intention des parties.

Après avoir examiné les considérations de principe, la pratique du secteur d'activité en cause et la jurisprudence canadienne et américaine, la Cour d'appel de l'Alberta ((1999), 74 Alta. L.R. (3d) 219) a conclu que les droits de redevance dérogatoire pouvaient constituer des intérêts fonciers si telle était l'intention des parties. M'appuyant essentiellement sur les mêmes motifs que la Cour d'appel, je suis d'avis que les droits de redevance dérogatoire peuvent constituer des intérêts fonciers.

IV. La question en litige

Une redevance dérogatoire issue d'une participation directe (un héritage incorporel) peut-elle constituer un intérêt foncier?

V. Analyse

En common law, un intérêt foncier pouvait être issu d'un héritage corporel, mais non d'un héritage incorporel. Dans le *Dictionary of Canadian Law* (2e éd. 1995), la notion de « *corporeal hereditament* » (héritage corporel) est définie comme suit :

[TRADUCTION]

1. Chose matérielle par contraste avec un droit. Peut s'entendre de fonds de terre, bâtiments, minéraux, arbres ou accessoires fixes. . .

2. Fonds de terre. . .

L'expression « *incorporeal hereditament* » (héritage incorporel) est définie comme suit :

[TRADUCTION]

1. « (Droit) . . . sur un fonds de terre, qui (inclut) des choses telles que les rentes-charges, annuités, servitudes, profits à prendre, etc. » . . .

2. Property which is not tangible but can be inherited. . . .

In *Berkheiser v. Berkheiser*, [1957] S.C.R. 387, at p. 392, Rand J. held that an oil and gas lease, the interest from which an overriding royalty is created, can be a *profit à prendre*, an interest in land. A *profit à prendre* is an incorporeal hereditament. The appellant has submitted that at common law, an interest in land could not issue from an incorporeal hereditament and therefore overriding royalties cannot be interests in land.

Canadian case law suggests otherwise. In *Saskatchewan Minerals v. Keyes*, [1972] S.C.R. 703, the majority declined to decide whether an overriding royalty could be an interest in land. However, Laskin J. in dissent specifically addressed that issue. He did not find the distinction between corporeal and incorporeal hereditaments to be useful in this context and discussed the difficulty of conforming new commercial concepts to anachronistic categories at p. 722:

> The language of "corporeal" and "incorporeal" does not point up the distinction between the legal interest and its subject-matter. On this distinction, all legal interests are "incorporeal", and it is only the unconfronted force of a long history that makes it necessary in this case to examine certain institutions of property in the common law provinces through an antiquated system of classification and an antiquated terminology. The association of rents and royalties has run through the cases (as in *Re Dawson and Bell*, *supra*, the *Berkheiser* case, *supra*, and cf. *Attorney-General of Ontario v. Mercer*, at p. 777) but without the necessity hitherto in this Court to test them against the common law classifications of interests in land or to determine whether those classifications are broad enough to embrace a royalty in gross.

Laskin J. referred to *Berkheiser*, *supra*, where Rand J. held that a royalty was analogous to rent. While that case involved a lessor's royalty, Laskin J. found that although theoretically the holder of a lessor's royalty holds an interest in reversion, whereas the holder of an overriding royalty does not, since in essence the two interests are identical,

2. Bien qui n'est pas matériel, mais qui peut être transmis par voie héréditaire . . .

9 Dans *Berkheiser c. Berkheiser*, [1957] R.C.S. 387, p. 392, le juge Rand a décidé qu'une concession pétrolière et gazière, l'intérêt dont est issue une redevance dérogatoire, peut être un profit à prendre, un intérêt foncier. Un profit à prendre est un héritage incorporel. L'appelante a prétendu que, en common law, un intérêt foncier ne pouvait être issu d'un héritage incorporel et que, par conséquent, les redevances dérogatoires ne pouvaient pas constituer des intérêts fonciers.

10 La jurisprudence canadienne semble indiquer le contraire. Dans *Saskatchewan Minerals c. Keyes*, [1972] R.C.S. 703, la Cour suprême à la majorité s'est abstenue de décider si une redevance dérogatoire pouvait constituer un intérêt foncier. Toutefois, le juge Laskin, dissident, s'est intéressé précisément à cette question. Il n'a pas jugé la distinction entre les héritages corporels et incorporels utile dans ce contexte et il a traité de la difficulté de concilier les concepts modernes du commerce et les catégories anachroniques à la p. 722 :

> Les expressions « corporel » et « incorporel » ne font pas ressortir la distinction entre l'intérêt en droit et l'objet auquel il se rattache. D'après cette distinction tous les intérêts en droit sont « incorporels », et c'est l'autorité jamais attaquée d'une longue évolution historique qui nous oblige ici à étudier certaines institutions de la propriété dans les provinces régies par la *common law* au moyen d'un système de classification suranné et d'une terminologie surannée. Les rentes et les redevances ont été associées dans la jurisprudence (par exemple, dans les cause *Re Dawson and Bell* et *Berkheiser*, précitées; voir aussi *Attorney General of Ontario v. Mercer*, p. 777), mais jusqu'à maintenant, cette Cour n'a jamais eu à les analyser en regard de la classification des intérêts dans un bien-fonds en *common law*, ni à déterminer si cette classification est assez générale pour englober une redevance existant par elle-même.

11 Le juge Laskin s'est reporté à la décision *Berkheiser*, précitée, où le juge Rand a décidé qu'une redevance était assimilable à une rente. Bien que cette affaire ait porté sur une redevance de bailleur, le juge Laskin a estimé que, même si en théorie le titulaire d'une redevance de bailleur détient un intérêt de réversion, ce qui n'est pas le

there should be no distinction between the two royalty interests in their treatment as interests in land. The effect of Laskin J.'s reasons was to render inapplicable, at least insofar as overriding royalties, the common law rule against creating interests in land out of incorporeal interests.

12 Laskin J. concluded that the overriding royalty was an interest in land, analogous to a rent-charge. It is significant that he did not find all overriding royalty interests to be interests in land. He held that the intentions of the parties judged by the language creating the royalty would determine whether the parties intended to create an interest in land or to create contractual rights only.

13 In *Scurry-Rainbow Oil Ltd. v. Galloway Estate* (1993), 138 A.R. 321 (Q.B.), aff'd (1994), 157 A.R. 65 (C.A.), and in *Canco Oil and Gas Ltd. v. Saskatchewan* (1991), 89 Sask. R. 37 (Q.B.), Hunt J. and Matheson J. respectively relied upon the dissent in *Keyes*, *supra*, to find that lessor royalties can be interests in land depending on the intentions of the parties and the language used to create the interest. The Court of Appeal in *Scurry-Rainbow* did not base its decision on this issue.

14 The appellant referred to cases that held royalty interests not to be interests in land. (See *St. Lawrence Petroleum Ltd. v. Bailey Selburn Oil & Gas Ltd.*, [1963] S.C.R. 482; *Vanguard Petroleums Ltd. v. Vermont Oil & Gas Ltd.*, [1977] 2 W.W.R. 66 (Alta. S.C.T.D.); *Isaac v. Cook* (1982), 44 C.B.R. 39 (N.W.T.S.C.); *Guaranty Trust Co. v. Hetherington* (1987), 50 Alta. L.R. (2d) 193 (Q.B.), aff'd in part [1989] 5 W.W.R. 340 (Alta. C.A.); *Vandergrift v. Coseka Resources Ltd.* (1989), 67 Alta. L.R. (2d) 17 (Q.B.); *Nova Scotia Business Capital Corp. v. Coxheath Gold Holdings Ltd.* (1993), 128 N.S.R. (2d) 118 (S.C.).) Although each of these cases held that the royalty therein is not an interest in land, they do not support the proposition that a royalty cannot be an interest in land. In each case the court found

cas du titulaire d'une redevance dérogatoire, il n'y avait pas lieu de faire de distinction entre ces deux redevances dans l'effet qui leur est attribué à titre d'intérêts fonciers, puisque les deux intérêts sont essentiellement identiques. Les motifs du juge Laskin ont eu pour effet de rendre inapplicable, du moins quant aux redevances dérogatoires, la règle de common law interdisant la création d'intérêts fonciers à partir d'intérêts incorporels.

Le juge Laskin a conclu que la redevance dérogatoire était un intérêt foncier, analogue à une rente-charge. Il est significatif qu'il n'ait pas jugé que toutes les redevances dérogatoires étaient des intérêts fonciers. Il a estimé que les intentions des parties révélées par les termes du contrat de redevance permettraient de décider si les parties avaient l'intention de créer un intérêt foncier ou uniquement des droits contractuels.

Dans *Scurry-Rainbow Oil Ltd. c. Galloway Estate* (1993), 138 A.R. 321 (B.R.), conf. par (1994), 157 A.R. 65 (C.A.), et dans *Canco Oil and Gas Ltd. c. Saskatchewan* (1991), 89 Sask. R. 37 (B.R.), les juges Hunt et Matheson, respectivement, se sont fondés sur l'opinion dissidente exprimée dans *Keyes*, précité, pour conclure que les redevances de bailleur pouvaient être des intérêts fonciers selon les intentions des parties et les termes employés pour créer l'intérêt. La Cour d'appel dans *Scurry-Rainbow* n'a pas fondé sa décision sur cette question.

L'appelante a cité des décisions où il a été jugé que des droits de redevance n'étaient pas des intérêts fonciers. (Voir *St. Lawrence Petroleum Ltd. c. Bailey Selburn Oil & Gas Ltd.*, [1963] R.C.S. 482; *Vanguard Petroleums Ltd. c. Vermont Oil & Gas Ltd.*, [1977] 2 W.W.R. 66 (C.S. 1re inst. Alb.); *Isaac c. Cook* (1982), 44 C.B.R. 39 (C.S.T.N.-O.); *Guaranty Trust Co. c. Hetherington* (1987), 50 Alta. L.R. (2d) 193 (B.R.), conf. en partie par [1989] 5 W.W.R. 340 (C.A. Alb.); *Vandergrift c. Coseka Resources Ltd.* (1989), 67 Alta. L.R. (2d) 17 (B.R.); *Nova Scotia Business Capital Corp. c. Coxheath Gold Holdings Ltd.* (1993), 128 N.S.R. (2d) 118 (C.S.).) Bien que dans toutes ces décisions, il ait été statué que la redevance en cause n'était pas un intérêt foncier, elles ne permettent pas d'affirmer qu'une redevance ne peut

that the language used by the parties in creating the interest did not evidence the intention to create an interest in land.

That royalties can be interests in land finds support in W. H. Ellis's "Property Status of Royalties in Canadian Oil and Gas Law" (1984), 22 *Alta. L. Rev.* 1, at p. 10:

> Royalties, as used in the oil and gas industry, make sense only if they are property interests in unproduced minerals. Owners of mineral rights should be able to create them as such if they make clear their intent to do so.

In *Oil & Gas Agreements Update* (1989), J. F. Newman in his article "Can a Gross Overriding Royalty Be an Interest in Land?" concludes that most parties to an overriding royalty interest intend for such interest to be an interest in land. Evidence of this is the common practice of registering caveats in the Land Titles Office of Alberta seeking to protect that interest.

The oil and gas industry, which developed largely in the second half of the 20th century and continues to evolve, is governed by a combination of statute and common law. The application of common law concepts to a new or developing industry is useful as it provides the participants in the industry and the courts some framework for the legal structure of the industry. It should come as no surprise that some common law concepts, developed in different social, industrial and legal contexts, are inapplicable in the unique context of the industry and its practices.

The appellant could not offer any convincing policy reasons for maintaining the common law prohibition on the creation of an interest in land from an incorporeal hereditament other than fidelity to common law principles. Given the custom in the oil and gas industry and the support found in case

jamais être un intérêt foncier. Dans chacune, la cour a conclu que les termes employés par les parties pour créer l'intérêt ne révélaient pas l'intention de créer un intérêt foncier.

15 La thèse selon laquelle les redevances peuvent constituer des intérêts fonciers est étayée par l'article de W. H. Ellis, « Property Status of Royalties in Canadian Oil and Gas Law » (1984), 22 *Alta. L. Rev.* 1, p. 10 :

> [TRADUCTION] Les redevances, telles qu'utilisées dans le secteur des hydrocarbures, n'ont de sens que si elles constituent des intérêts de propriété dans les minéraux non encore produits. Les titulaires des droits miniers doivent pouvoir créer de tels intérêts, s'ils précisent clairement que telle est leur intention.

16 Dans l'article intitulé « Can a Gross Overriding Royalty Be an Interest in Land? », publié dans *Oil & Gas Agreements Update* (1989), J. F. Newman conclut que, la plupart du temps, il est de l'intention des parties à un contrat de redevance dérogatoire que le droit de redevance constitue un intérêt foncier. En fait foi la pratique courante qui consiste à enregistrer des oppositions au bureau d'enregistrement des titres fonciers de l'Alberta afin de protéger ces intérêts.

17 Le secteur des hydrocarbures, qui s'est développé en grande partie dans la seconde moitié du XX^{e} siècle et continue d'évoluer, est régi par un ensemble de lois et de règles de common law. L'application des notions de common law à une industrie nouvelle ou en évolution est utile, car elle fournit aux intervenants de l'industrie et aux tribunaux un cadre juridique à l'intérieur duquel structurer les activités de ce secteur. Il n'est guère étonnant que certaines notions de common law élaborées dans des contextes sociaux, industriels et juridiques différents soient inapplicables dans le contexte particulier de ce secteur d'activité et de ses pratiques.

18 L'appelante n'a pu invoquer aucune raison de principe convaincante justifiant le maintien de la règle de common law qui interdit la création d'un intérêt foncier à partir d'un héritage incorporel, si ce n'est la fidélité aux principes de common law. Étant donné, d'une part, la coutume dans le secteur des

law, it is proper and reasonable that the law should acknowledge that an overriding royalty interest can, subject to the intention of the parties, be an interest in land.

19 The Alberta Court of Appeal offered compelling insight into the evolution of the law at para. 52:

> The principles inherent in the above argument need not be applied to prevent an overriding royalty from being an interest in land for a number of reasons. First, royalties and ORRs need not be classified into a traditional common law property category unsuited to the realities of the oil and gas industry and need not be subject to the arcane strictures of traditional categories. Second, some authorities suggest it is possible to have an incorporeal interest (an overriding royalty) created from an incorporeal interest. Third, even if it is not possible, the rule need not be blindly adhered to because, as stated by Mr. Justice Holmes in "The Path of the Law" (1897) 10 Harv. L. Rev. 457 at p. 469, it is "revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV," and "still more revolting if the grounds upon which it was laid down have vanished long since, and the rule persists from blind imitation of the past."

20 In *Friedmann Equity Developments Inc. v. Final Note Ltd.*, [2000] 1 S.C.R. 842, 2000 SCC 34, at para. 42, Bastarache J. outlined when changes to the rules of common law are necessary:

> (1) to keep the common law in step with the evolution of society,
>
> (2) to clarify a legal principle, or
>
> (3) to resolve an inconsistency.

In addition, the change should be incremental, and its consequences must be capable of assessment.

21 In this appeal, to clarify the status of overriding royalties, the prohibition of the creation of an interest in land from an incorporeal hereditament is inapplicable. A royalty which is an interest in land may be created from an incorporeal hereditament such as

hydrocarbures et, d'autre part, l'appui fourni par la jurisprudence, il est opportun et raisonnable que la loi reconnaisse qu'un droit de redevance dérogatoire peut constituer un intérêt foncier, à condition que telle soit l'intention des parties.

La Cour d'appel de l'Alberta nous offre des réflexions convaincantes sur l'évolution du droit, au par. 52 :

> [TRADUCTION] Il n'est pas nécessaire d'appliquer les principes qui se dégagent de l'argument précité pour empêcher qu'une redevance dérogatoire ne constitue un intérêt foncier, et ce pour plusieurs raisons. D'abord, il n'est pas nécessaire de classer les redevances et les redevances dérogatoires dans les catégories classiques du droit des biens en common law qui ne s'accordent pas avec les réalités du secteur pétrolier et gazier, ni de les assujettir aux définitions ésotériques des catégories classiques. Ensuite, certaines sources semblent indiquer qu'il est possible qu'un intérêt incorporel (une redevance dérogatoire) soit créé à partir d'un intérêt incorporel. Enfin, même si cela n'était pas possible, nous ne serions pas tenus de suivre la règle aveuglément, puisque, pour reprendre les propos du juge Holmes dans « The Path of the Law » (1897) 10 Harv. L. Rev. 457, p. 469, il est « choquant que la valeur d'une règle de droit ne tienne qu'à son ancienneté, dût-elle remonter à Henri IV », et « encore plus choquant que son fondement ait disparu depuis longtemps, mais qu'elle subsiste en raison d'un passéisme aveugle. »

Dans *Friedmann Equity Developments Inc. c. Final Note Ltd.*, [2000] 1 R.C.S. 842, 2000 CSC 34, par. 42, le juge Bastarache a mis en lumière les cas où une modification de la common law sera nécessaire :

> (1) pour permettre à la common law de suivre l'évolution de la société;
>
> (2) pour préciser un principe de droit;
>
> (3) pour éliminer une contradiction.

De plus, la modification doit être graduelle et ses conséquences doivent pouvoir être évaluées.

Dans le présent pourvoi, pour préciser le droit en matière de redevances dérogatoires, l'interdiction de créer un intérêt foncier à partir d'un héritage incorporel est inapplicable. Une redevance qui est un intérêt foncier peut être créée à partir d'un héritage

a working interest or a *profit à prendre*, if that is the intention of the parties.

Virtue J. in *Vandergrift*, *supra*, at p. 26, succinctly stated:

> . . . it appears reasonably clear that under Canadian law a "royalty interest" or an "overriding royalty interest" can be an interest in land if:
>
> 1) the language used in describing the interest is sufficiently precise to show that the parties intended the royalty to be a grant of an interest in land, rather than a contractual right to a portion of the oil and gas substances recovered from the land; and
>
> 2) the interest, out of which the royalty is carved, is itself an interest in land.

VI. Conclusion

The appeal is dismissed with costs to the respondents.

Appeal dismissed.

Solicitors for the appellant: Jones, Rogers, Toronto.

Solicitors for the respondents: McDonald Crawford; Bennett Jones, Calgary.

incorporel tel qu'une participation directe ou un profit à prendre, si telle est l'intention des parties.

22 Dans *Vandergrift*, précité, p. 26, le juge Virtue dit succinctement :

> [TRADUCTION] . . . il semble assez clair que, selon le droit canadien, un droit de redevance ou un droit de redevance dérogatoire peut être un intérêt foncier si les conditions suivantes sont réunies :
>
> (1) les termes employés pour décrire l'intérêt sont suffisamment précis pour démontrer l'intention des parties que la redevance constitue un intérêt foncier, plutôt qu'un droit contractuel sur une fraction des hydrocarbures extraits du sol;
>
> (2) l'intérêt dont est issue la redevance est lui-même un intérêt foncier.

VI. Conclusion

23 Le pourvoi est rejeté avec dépens en faveur des intimés.

Pourvoi rejeté.

Procureurs de l'appelante : Jones, Rogers, Toronto.

Procureurs des intimés : McDonald Crawford; Bennett Jones, Calgary.

This is Exhibit "T" referred to in the Affidavit of Eugenie Gaiswinkler sworn July 13, 2021.

Commissioner for Taking Affidavits (or as may be)

MAUREEN ELIZABETH UITVLUGT, a Commissioner, etc.,
Province of Ontario, for
Whittal + Company Law Firm
Professional Corporation.
Expires March 16, 2024

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *McDonald v. Bode Estate,*
2018 BCCA 140

Date: 20180418
Docket: CA44401

Between:

Laurie McDonald, Misty Hebert, and 0743769 B.C. Ltd.

Appellants
(Petitioners)

And

**Hans Wilhelm Bode (deceased), The Estate of Hans Wilhelm Bode,
Elsa Luise Bode (deceased), The Estate of Elsa Luise Bode,
and ConocoPhillips Canada Operations Ltd.**

Respondents
(Respondents)

Before: The Honourable Mr. Justice Willcock
The Honourable Mr. Justice Savage
The Honourable Mr. Justice Hunter

On appeal from: An order of the Supreme Court of British Columbia,
dated March 30, 2017 (*McDonald v. Bode Estate*, 2017 BCSC 515,
Vancouver Registry S147599).

Counsel for the Appellants:	G. Kim
Counsel for the Respondents - Estates of Hans Wilhelm Bode and Elsa Luise Bode:	G. Whidden
Place and Date of Hearing:	Vancouver, British Columbia January 4, 2018
Place and Date of Judgment:	Vancouver, British Columbia April 18, 2018

Written Reasons by:
The Honourable Mr. Justice Willcock

Concurred in by:
The Honourable Mr. Justice Savage
The Honourable Mr. Justice Hunter

Summary:

The appellants sought to have an assignment of rents in favour of the respondents struck from title to their real property. The assignment was a bare assignment, not a reservation of rents in the initial transfer of the property. The chambers judge dismissed the application, holding that the assignment of rents ran with the land. Held: appeal dismissed. An assignment of rents payable pursuant to a surface lease, like a reservation of rents, is capable of creating an interest in land, provided that the parties intend that it does so. Registration of the assignment is not proof of its validity but may provide some evidence of the parties' intentions. In this case, the chambers judge's finding that the parties intended the assignment to run with the land is entitled to deference; the judge committed no error that would entitle this Court to overturn this finding.

Reasons for Judgment of the Honourable Mr. Justice Willcock:

Introduction

[1] This is an appeal from an order dismissing an application to strike a charge registered against the title to real property: an assignment of the rents due under a surface lease. At issue is whether the assignment of rents in this case runs with the land or simply creates obligations personal to the parties to the agreement.

Background

[2] In May 2010, the numbered company that is an appellant purchased District Lot 155, Peace River District, British Columbia, from Foothills Land & Cattle Co. Ltd. ("Foothills"). In December 2012, the numbered company sold one-third of its interest in the land to the appellant, Laurie McDonald, and one-third of its interest to the appellant, Misty Hebert. At the time the property was purchased by the numbered company, and at the time interests in the property were conveyed to the appellants Ms. McDonald and Ms. Hebert, there were two assignments of rents registered against the title to the property: an assignment of surface lease T6190 and an assignment of surface lease PL67828.

[3] Surface lease T6190 was made and registered on February 22, 1983. It has subsequently expired; its terms are irrelevant for our purposes.

[4] Surface lease PL67828 was entered into between the prior owners of the property, Hans and Elsa Bode, as lessors, and Canadian Hunter Exploration Ltd. ("Hunter"), as lessee, on October 9, 1997. It granted to the lessee those portions of the lands shown on a plan attached to the lease:

> To be held by the Lessee as tenant for the term of TWENTY FIVE (25) YEARS from the date hereof for the purposes of exploration, development, production or storage of petroleum and natural gas and related hydrocarbons and/or substances produced in association therewith in consideration of the … payments to be paid by the Lessee to the Lessor ….

[5] The lease required the payment of rent annually in the amount of $2,270. It required the lessee to operate and maintain the demised premises in accordance with good oilfield practices. It required the lessee, upon the abandonment of the demised premises, to leave them, to the extent practical to do so, in the condition that existed immediately prior to the entry. It provided for renewal of the lease for a term of 25 years and subsequent renewal for a further 25-year term. It also provided:

> 15. The demised premises covered by this lease shall not be used for purposes other than those set out in this lease unless the Lessor consents in writing to such use.
>
> …
>
> 18. The parties hereto may delegate, assign, or convey to other persons or corporations, all or any of the powers, rights, and interests obtained by or conferred upon the parties hereunder and may enter into all agreements, contracts and writings and perform all necessary acts and things to give effect to the provisions of this clause. The assigning party shall notify the other in writing of any delegation, assignment, or conveyance of the said lease;

and

> 25. These presents and everything herein contained shall enure to the benefit of and be binding upon the Lessor, his heirs, executors, administrators, successors and assigns and upon the Lessee, its successors and assigns.

[6] The lease was registered on December 9, 1997, together with a "Form C" in the Land Title Registry.

[7] In December 1997, the Bodes sold Lot 155 to Foothills. The contract of purchase and sale is not in evidence. There is no evidence of a reservation of rents

in the transfer of the property to Foothills. Foothills executed an assignment of rents agreement in favour of the Bodes that was registered in the Land Title Office under number PL070091 (the "Assignment of Rents" or the "Assignment").

[8] The Assignment of Rents contained the following relevant provisions:

> WHEREAS:
>
> A. The Assignee has been the registered owner of the following described lands, situate, lying and being in the Peace River Assessment District, in the Province of British Columbia, namely:
>
> District Lot 155, Peace River District Except the West 25 m …
>
> B. On October 9, 1997 a surface lease was granted over a portion of the Lands as detailed in a Lease in favour of Canadian Hunter Exploration Ltd. … registered in the Prince George Land Title Office on December 9, 1997 …
>
> C. The Assignor is now or will be the occupier and owner of the Lands, and but for this assignment, the party entitled to receive all annual rental payments payable pursuant to the Lease (the "Compensation");
>
> D. It was a term of the transfer of title by the Assignee to the Assignor that, concurrent with registration of the transfer, the Assignor would grant the Assignee an assignment of the Compensation.
>
> …
>
> 1. The Assignor does hereby assign and transfer unto the Assignee all of the right, interest and title of the Assignor in and to the Compensation.
>
> 2. The Assignee shall have full power and authority for the Assignor to demand, sue for, recover, receive and give effectual receipts, releases and discharges for the Compensation and to negotiate any change in the Compensation.
>
> [Emphasis added.]

[9] The Assignment suggests there was no reservation of rents in the conveyance, given the words I have emphasized in Recital C.

[10] Foothills covenanted to comply with the provisions of the lease and covenanted and agreed that "[t]he within Assignment shall continue to be effective in respect to and notwithstanding any modifications, extensions or replacements to the Lease".

[11] The Assignment also provides:

> 7. These presents and everything contained herein shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

[12] Hunter paid rent directly to the Bodes until ConocoPhillips Canada Operations Ltd. ("ConocoPhillips") acquired its interest in the surface lease.

[13] The appellants did not contest that they had notice of both the lease and the Assignment of Rents when they acquired the property.

[14] In May 2014, counsel for the appellants wrote to the respondents demanding that they provide the appellants an accounting of the rental payments made pursuant to the lease from December 21, 2012 to the date of the demand. They demanded the respondents, Mr. and Mrs. Bode, cooperate in transferring the interest in the Assignment to the appellants. They also demanded ConocoPhillips "henceforth make payments of the Rental Payments directly to the present landowners."

[15] On October 2, 2014, the respondents having refused to comply with the demands made of them, the appellants filed a petition seeking: a declaration that the Assignment of Rents expired on or after December 21, 2012; cancellation of the charges on the lands; a declaration that they were entitled to receipt of all rental payments payable pursuant to the surface lease; and an order requiring ConocoPhillips to pay the future rent payable pursuant to the surface leases to the appellants.

[16] The petition came on for hearing on March 16, 2017. The Court, for reasons indexed as 2017 BCSC 515, denied the orders sought.

[17] After reviewing the jurisprudence, the chambers judge concluded the petition would be determined by resolving the question whether the parties to the Assignment of Rents intended the document to create an interest in the property.

[18] He held:

> [53] I have determined that it was the intention of the Bodes and Foothills to create a registerable interest in land to secure the payment of the Rental Payments. Their intention is manifest from the wording of the Assignment of Rents itself and their conduct.
>
> [54] To start with, and after describing the transfer of title by the Bodes to Foothills, the Assignment of Rents specifically records that it is a term of the transfer of title of the Property that Foothills would grant an assignment of the annual rent to the Bodes. …
>
> [55] "Compensation" is defined in the Recital "C" to mean "all annual rental payments payable pursuant to the Lease."
>
> [56] Further evidence of the parties' intention is gleaned from other clauses in the document. …
>
> [57] The Assignment of Rents did not prohibit Foothills from assigning its rights under the Lease to another entity. To the contrary, I infer from its language that the parties contemplated that Foothills could assign its rights under the Lease to another party. Specifically, Recital "E" states that "The Lessee or its successor in title is hereinafter called the "Occupant".
>
> [58] To assign or otherwise deal with the Lease, Foothills must obtain the Bodes' consent. ...
>
> [59] Foothills gave to the Bodes full power and authority to deal with any subsequent occupant of the Property, to have all of Foothills rights, interest, and title to the Rental Payments, and to make demands for payment, provide receipts and releases, and to negotiate changes to the payment ….
>
> [60] Foothills was provided the right to assign the Rental Payments, but clause 4 c) made any such assignment conditional, so that it must reflect the parties' intentions as reflected in their agreement.
>
> [61] Lastly, and also of significance is that, according to clause 4 e), the … Bodes' interest in the Rental Payments is to survive even where the Lease is "replaced" ….
>
> [62] Moving away from the contents of the contract documents, I find that the actions taken by Foothills and the Bodes in retaining a lawyer to prepare and file with the Land Title Office a Form "C" - General Instrument, which they had executed as part of the closing documents, is additional evidence in this case of their intention to create an interest in land.
>
> …
>
> [63] When Foothills assigned its interest in the Rental Payments to the Bodes, it, along with the Bodes, intended to create an interest in land in favour of the Bodes. The Bodes protected their interest in documents created to effect the purchase and sale of the Property. They also did so when they, along with Foothills, submitted a General Instrument – Form "C" for registration to the Land Title Office, attaching the Assignment of Rents. Those documents were accepted for filing and registered against title to the Property.

[19] He rejected the argument that the appellants would be prejudiced in the event the Bodes remained entitled to the rental payments, due to the loss of use of their property. The appellants had notice of the Assignment of Rents as a charge against title and should have known that the common law permitted agreements concerning rents or royalties arising from leases for oil and gas exploration to create interests in land.

Grounds of Appeal

[20] The appellants submit that the judge erred by:

a) misinterpreting or misapplying the law to find that, in the absence of express statutory authority, assignments of rents are capable of creating an interest in land in British Columbia;

b) misapplying the laws of contractual interpretation by:

   i) finding that the language of the Assignment of Rents created an interest in land in favour of the Bodes;

   ii) finding that the Assignment of Rents was enforceable as against non-parties to the agreement;

   iii) reviewing extrinsic evidence to find that the Assignment of Rents created an interest in land in favour of the Bodes;

   iv) finding that the Bodes specifically retained the right to rents as a term of sale of the Lands when there was no basis in the evidence (i.e. no evidence from any agreement of sale); and

c) failing to properly consider the circumstances surrounding the rental payments in the context of equity.

Applicable Law

[21] This is said to be a case of first instance in this province. However, the question whether an assignment of rents payable pursuant to a surface lease can create an interest in land has been considered and specifically addressed by statutory provisions in Alberta and Saskatchewan. In Alberta, legislation providing that assignments of rents can be registered and create interests in land was introduced in 1985 and is currently embodied in s. 63 of the *Law of Property Act*, R.S.A. 2000, c. L-7. A similar statutory provision was first introduced in Saskatchewan in 1995 and is now embodied in s. 144 of the *Land Titles Act*, *2000*, S.S. 2000, c. L-5.1, which explicitly applies to interests created after April 1, 1995.

Prior to these amendments, the courts in Alberta and Saskatchewan had held that at common law a bare assignment of rents did not create an interest in land. By contrast, a reservation of rents from a conveyance could create an interest in land, at common law, in Saskatchewan. The status of reservations of rents was unsettled in Alberta.

[22] Counsel advise us that neither the effect of a reservation of rents nor the effect of an assignment of rents on the rights of subsequent third-party landowners has been considered in British Columbia.

[23] Many of the cases to which we have been referred were decided before the Supreme Court of Canada expanded the type of interests capable of running with title to land in *Bank of Montreal v. Dynex Petroleum Ltd.*, 2002 SCC 7 [*Dynex*]. In that case, the Court, dealing with the status of royalty interests, held there was no convincing policy reason for maintaining the common law prohibition on the creation of interests in land separated from the reversion. Major J., for the Court, held:

> 21. In this appeal, to clarify the status of overriding royalties, the prohibition of the creation of an interest in land from an incorporeal hereditament is inapplicable. A royalty which is an interest in land may be created from an incorporeal hereditament such as a working interest or a profit à prendre, if that is the intention of the parties.

[24] The Court accepted the following succinct statement from *Vandergrift v. Coseka Resources Ltd*. (1989), 95 A.R. 372 (Q.B.) at para. 29:

> … it appears reasonably clear, that under Canadian law, a "royalty interest", or an "overriding royalty interest", can be an interest in land if:
>
> > 1) the language used in describing the interest is sufficiently precise to show that the parties intended the royalty to be a grant of an interest in land, rather than a contractual right to a portion of the oil and gas substances recovered from the land; and
> >
> > 2) the interest, out of which the royalty is carved, is itself, an interest in land.

[25] The questions on this appeal are:

a) whether, at common law, in light of the decision in *Dynex*, an assignment of rents payable pursuant to a surface lease can create an interest in land; and

b) if so, was the trial judge correct in concluding that in the circumstances of this case the Assignment created such an interest?

Can an assignment of rents payable pursuant to a surface lease create an interest in land?

[26] This question is addressed by Di Castri, in *Registration of Title to Land* (Toronto: Thomson Reuters, 1987) (loose-leaf updated 2016, release 2), ch. 12 at 58 as follows:

> Rent is normally incident to the reversion of the lessor or reversioner and passes with it if he grants it to another. If the rent is severed from the reversion (as where either is assigned without the other) it becomes a rent in gross.
>
> The question of whether or not an assignment, separately from the reversion, of rents by a lessor to a registered mortgagee constitutes an interest in land was answered in the negative in [*Canada Trustco Mortgage Co. v. Skoretz* (1983), 45 A.R. 18 (Q.B.)].

[27] *Skoretz* is one of the cases in which the position at common law was canvassed in Alberta before the legislative amendment. The question in that case was described by Miller J., at para. 1, as follows: “At issue in this matter is whether an assignment of Rent Agreement is an interest in land enabling the assignee to maintain a caveat on the title to the land for the purpose of giving notice of his assignment to any interested party.”

[28] The Court quickly dealt with the question whether registration in itself confirmed the existence of an interest in land. The legislation in Alberta provided that a person claiming an interest in land could register a charge. The registration itself was notice of a claim, not evidence of its validity.

[29] Turning to the nature of the interest created by the assignment, Miller J. noted:

> [21] There are many instances in reported cases when a contractual right involving a piece of land has been held by courts not to give the right holder an "interest in land". The following are some examples of these situations.
>
> (a) An agreement by a purchaser to share profits of resale of the land with another does *not* give the latter an interest in the land but "simply a right, when it is sold, to receive one-half of the profits realized."
>
> (b) A *right of first refusal* (i.e., purchase) is a pure contractual right which may convert into an option to purchase. It is only at the latter point that the person holding the option owns an equitable interest in the land and it is only at this point that a caveat may be filed.
>
> (c) A solicitor's lien in connection with services and disbursements to foreclose on a mortgage is insufficient to found a caveat.
>
> (d) A real estate agent's commission cannot be secured by way of a caveat.
>
> (e) The right of a tenant in common who has made repairs to property from which his co-tenant has taken benefit, does not acquire a charge against the property. The industrious tenant only has a *personal* right to recover ….
>
> [Citations omitted; emphasis in original.]

[30] After canvassing at length the conflicting authorities (including, among those that narrowly restrict the scope of obligations that may be said to give rise to an interest in land: *Badger v. Megson* (1980), 14 Alta. L.R. (2d) 49 (Q.B.); and *Seel Mortgage Investment Corp. v. Tri-Dell James Construction Ltd.* (1981), 32 A.R. 299 (Q.B.); and among those that expansively define interests that are capable of running with the land: *Ex parte Hall; In re Whitting* (1878), 10 Ch. D. 615 (C.A.); *Hopkins v. Hopkins* (1883), 3 O.R. 223 (C.A.); *Dodds v. Thompson* (1865), L.R. 1 C.P. 133*;* and *Finch v. Gilray* (1889), 16 O.A.R. 484), he concluded:

> [35] To my mind, one of the key indicators as to whether an Assignment of Rent Agreement gives the assignee an interest in the land relates to the remedies available to the assignee if, and when, an assignee tries to exercise rights under the agreement.
>
> [36] One of the reasons that a lessor has been held to have an interest in the land is that he can recover the property when the lease terminates, either through performance or cancellation. He can also enter upon the property and distrain for rent arrears. It is clear that the assignee of rents has no right

> to recover the real property should the tenant default. In fact, it has been held by our own Court of Appeal that an assignee of rents does not even have the right to distrain under an Assignment of Rent Agreement. This decision was made in the case of *In re Edmonton Law Stationers Ltd. (In Liquidation)* and *The Canadian Bank of Commerce,* [1919] 3 W.W.R. 406. The only remedy available to an assignee under an Assignment of Rent Agreement would be to sue the tenant in the ordinary way for rent due and unpaid and to execute after obtaining judgment. Surely this is a far cry from a landlord's right to relief and is yet another indication that all an assignee receives under the assignment is a chose in action for a debt once the rent becomes due.
>
> [37] On the first issue before me, I find that the plaintiff, in this action did not acquire an interest in the property in question under the Assignment of Rent Agreement dated the 7th of May, 1980, and accordingly had no right to file a caveat against the title giving notice to the world of its position as assignee of present or future rents accrued or to be accrued from the property.

[31] In *Northland Bank v. Van der Geer*, 1986 ABCA 252, Irving J.A. dismissed an appeal from the decision of a master, confirmed in the Court of Queen's Bench, to the effect that an assignment of rents did not create an interest in land, despite the fact it had been registered pursuant to the land titles legislation in force at the time. He held:

> [13] The assignment of rents obtained by Northland in March of 1983 did not convey to Northland any interest in the lands[.] Should the property be rented and rents become payable, the most Northland would have as the assignee would be the chose in action to enforce their payment. The assignment of [r]ents does not provide Northland with any right capable of crystallizing into an interest in the lands.
>
> [14] This issue and the case law were reviewed in depth in *Canada Trustco Mortgage v. Skoretz* …. We agree with the conclusion of Miller, J. that the general assignment of rents does not create an interest in lands and therefore a caveat cannot be filed to give notice of such assignment.

[32] The status of assignments of rents after the 1985 statutory amendment in Alberta was canvassed in *Pegg v. Pegg* (1992), 128 A.R. 132 (Q.B.):

> [14] It seems clear that at common law, rentals payable are incorporeal hereditaments, which run with the land (see Victor Di Castri, Q.C., The Law of Vendor and Purchaser, vol. 2 (Toronto): Carswell, 1989, at 14-16). The distinction is consistently made that rent already accrued due is personal property, a mere chose in action whereas unaccrued rent is an incorporeal hereditament which follows the reversion. This position is amply supported by the three authorities noted in the plaintiff's submission: *Kennedy v. MacDonnell* (1901), 1 O.L.R. 250; *Smith v. Love*, [1954] 3 D.L.R. 287; and

> *Brown v. Gallagher & Co*. (1914), 19 D.L.R. 683. Additional authorities are noted in DiCastri (*supra*).
>
> [15] It is also clear that incorporeal hereditaments are rights of property of certain special classes. Their distinguishing feature is that the law of real property applies to them just as it applies to corporeal land (see Megarry and Wade, *The Law of Real Property* (5th ed.) (London: Stephens & Sons 1984) at p. 813. Megarry and Wade at p. 814 note that corporeal and incorporeal hereditaments together make up what is "real property" in the wide sense. Corporeal hereditaments are land. Incorporeal hereditaments are rights in land, which include such things as rent charges, annuities, easements, profits-à-prendre and so on. A line is drawn between real and personal property, each of which are governed by separate sets of rules. Rents are in a category, a species of property which are not physical things but yet must be governed by property law. DiCastri notes, at p. 14-16 that while the transfer of unaccrued rent does not carry with it the reversion as an incident, the answer to the question of whether or not the theory of unaccrued rent being an incorporeal hereditament permits of its grant a separate interest in land … is not altogether free from doubt. He notes, however, that in Alberta at least, the matter was put beyond doubt by the 1985 amendment to the *Law of Property Act*. …
>
> [Emphasis added.]

[33] The judgments in *Skoretz* and *Northland Bank* were followed in *Canadian Crude Separators Inc. v. Mychaluk* (1997), 207 A.R. 81 (Q.B.), leave to appeal ref'd 1998 ABCA 62, where the central issue was dealt with by McBain J. as follows, at para. 31:

> I am … convinced that the Northland case is clear authority in Alberta for what it does say. It endorses Miller, J.'s, decision that "the general assignment of rents does not create an interest in lands and therefore a caveat cannot be filed to give notice of such assignment."

[34] The manner in which assignments and reservations of rent have been addressed in Saskatchewan is helpfully reviewed in *Nicolson v. Trozzo*, 2014 SKQB 182. In that case, the applicants sought to discharge from title a registered life interest in rents payable pursuant to a surface lease. The rents had been granted by the beneficiaries of an estate to their mother, who had no other interest in the land. Schwann J. considered it to be settled law in Saskatchewan that, in some instances, a person's interest in compensation payable under a surface lease may constitute a registrable interest in land (citing: *Garland v. Jones*, [1993] 7 W.W.R. 102 (Sask. Q.B.); *Kerr v. PanCanadian Petroleum Ltd.*, 2004 SKQB 404 at para. 33; and

Swenson v. Swenson, 2006 SKQB 438). He regarded the cited cases as authority for the proposition that a reservation of rents creates an interest in land.

[35] He noted:

> [26] It is also clear that as a matter of law, and as noted in *Garland, supra,* rentals payable constitute incorporeal hereditaments which are considered to be rights in the land. (Victor Di Castri, *Registration of Title to Land*, looseleaf, vol. 2 (Toronto: Carswell, 1987) at p. 14-39).

[36] On the other hand, Schwann J. cites and does not take issue with the Alberta decision in *Northland Bank*, to the effect that at common law an assignment of rents does not create an interest in land. He also cites *Swenson* for that proposition.

[37] Justice Schwann correctly identifies the distinct manner in which reservations of rent had been treated in Saskatchewan. In *Garland* and in *Kerr,* the conveyances of the land in question expressly reserved rents to the vendors. In *Kerr*, the Court held:

> [33] … [The] reservation of surface lease rentals to the lessor does create an interest in land. In *The Land Titles Act, 2000*, S.S. 2000, c. L-5.1, "interest" is defined as any right, interest or estate, whether legal or equitable, in, over or under land recognized at law that is less than title. In this jurisdiction, it is well settled that rent accruing due is an interest which can be protected by caveat. See *Garland v. Jones*, [1993] 7 W.W.R. 102; (1993), 111 Sask. R. 134 (Sask. Q.B.).
>
> [Emphasis added.]

[38] In *Swenson*, there was both a reservation of rents for life and an assignment. Addressing the assignment, and the effect of the recognition of assignments of rents in the *Land Titles Act*, *2000*, Dawson J. held:

> [31] The question [the 1995 amendment] raises is whether, prior to April 1, 1995, an assignment of rents is an interest in land. I was unable to find any case law in Saskatchewan which has considered this section. The plaintiff referred the court to the Saskatchewan cases of *Garland v. Jones*, [1993] 7 W.W.R. 102 (Sask. Q.B.) and *Kerr v. PanCanadian Petroleum Ltd*., 2004 SKQB 404; (2004), 253 Sask. R. 262 (Sask. Q.B.) both of which cases dealt with issues surrounding the reservation of surface lease rental payments. …
>
> …

> [33] Both of these cases, which dealt with the reservation of surface lease rental payments, held that the reservation of rents was an interest in land capable of being caveated. …
>
> [Emphasis added.]

[39] After discussing *Skoretz*, *Northland Bank*, *Pegg*, *Webster v. Brown*, 2004 ABQB 321, and *Mychaluk*, Dawson J. held that the assignment of rents did not create any interest in land and ceased to have any effect upon the title after the conveyance.

[40] The argument unsuccessfully advanced by the Bank of Montreal in *Dynex* was, as summarized by Major J. at para. 3, that "at common law an interest in land could not arise from an incorporeal hereditament and therefore the respondents' overriding royalties (which arose from a working interest, an incorporeal hereditament) did not rank higher in priority than the appellant's security interest". The interest there under consideration, an overriding royalty, was described by Major J. in the following terms, at para. 2:

> Typically, the owner of minerals *in situ* will lease to a potential producer the right to extract such minerals. This right is known as a working interest. A royalty is an unencumbered share or fractional interest in the gross production of such working interest. A lessor's royalty is a royalty granted to (or reserved by) the initial lessor. An overriding royalty or a gross overriding royalty is a royalty granted normally by the owner of a working interest to a third party in exchange for consideration which could include, but is not limited to, money or services (e.g., drilling or geological surveying) (G. J. Davies, "The Legal Characterization of Overriding Royalty Interests in Oil and Gas" (1972), 10 *Alta. L. Rev.* 232, at p. 233). The rights and obligations of the two types of royalties are identical. The only difference is to whom the royalty was initially granted.

[41] The party receiving the benefit of the royalty did not have any interest in reversion over the underlying lands. In this sense, the interest-holder described in *Dynex* is similar to the respondents, who receive the benefit of a bare assignment of rents.

[42] The Alberta Court of Appeal in *Dynex,* (*sub nom. Bank of Montreal v. Enchant Resources Ltd.*) 1999 ABCA 363**,** summarized the bank's position as follows:

> [59] When it comes to overriding royalties, the objection has been raised that there can be "no rent on a rent". As stated by R.E. Megarry and H.W.R. Wade, *The Law of Real Property*, 4th ed. (London: Stevens & Sons, 1975) at p. 794:
>
> > At common law a rentcharge could be charged only upon a corporeal hereditament. There could be no rentcharge charged upon another rentcharge or other incorporeal hereditament, since obviously there could then be no right of distress.
>
> [60] This longstanding rule of real property law that rent cannot issue out of an incorporeal hereditament was observed by Laskin J., in *Saskatchewan Minerals* v. *Keyes, supra* at pp. 721-22:
>
> > At common law, whether a royalty could be classified as rent, and hence enjoy in its unaccrued state the character of an interest in land, depended on whether it issued out of a "corporeal" interest, as, for example, out of an estate in fee of minerals in place, or whether it was incident to a reversion upon a true lease which also gave a right to extract minerals. In the former case it would be in effect a rent-charge; in the latter, a rent service. Rent at common law could not issue out of an "incorporeal" interest, as for example, a *profit à prendre* in gross; and whatever it might be called, it would not be an interest in land.
>
> [Emphasis added.]

[43] The Supreme Court of Canada dismissed the bank's argument, holding that an interest in land might be created by a contract that did not give the rights-holder any interest in the reversion. Referring to the dissenting judgment of Laskin J. (as he then was) in *Saskatchewan Minerals v. Keyes* (1971), [1972] S.C.R. 703, Major J. noted:

> 11 Laskin J. referred to *Berkheiser* [*Berkheiser v. Berkheiser and Glaister*, [1957] S.C.R. 387], where Rand J. held that a royalty was analogous to rent. While that case involved a lessor's royalty, Laskin J. found that although theoretically the holder of a lessor's royalty holds an interest in reversion, whereas the holder of an overriding royalty does not, since in essence the two interests are identical, there should be no distinction between the two royalty interests in their treatment as interests in land. The effect of Laskin J.'s reasons was to render inapplicable, at least insofar as overriding royalties, the common law rule against creating interests in land out of incorporeal interests.
>
> [Emphasis added.]

[44] After reviewing the numerous cases in which courts had held that royalty interests were not interests in lands, Major J. held:

> 14 … Although each of these cases held that the royalty therein is not an interest in land, they do not support the proposition that a royalty cannot be an interest in land. In each case the court found that the language used by the parties in creating the interest did not evidence the intention to create an interest in land.
>
> 15 That royalties can be interests in land finds support in W. H. Ellis's "Property Status of Royalties in Canadian Oil and Gas Law" (1984), 22 *Alta. L. Rev.* 1, at p. 10:
>
> > Royalties, as used in the oil and gas industry, make sense only if they are property interests in unproduced minerals. Owners of mineral rights should be able to create them as such if they make clear their intent to do so.
>
> 16 In *Oil & Gas Agreements Update* (1989), J. F. Newman in his article "Can a Gross Overriding Royalty Be an Interest in Land?" concludes that most parties to an overriding royalty interest intend for such interest to be an interest in land. Evidence of this is the common practice of registering caveats in the Land Titles Office of Alberta seeking to protect that interest.

[45] Three principles emerge from these passages: first, that an interest in land may be created from an incorporeal hereditament without a reversionary interest or a right of distress; second, whether an interest in land is created hinges in part upon the intention of the parties; and third, registration of the interest is evidence of the parties' intention that the interest should run with the land.

[46] The appellants say the ratio of *Dynex* is that an interest in land may be created by a party with contractual right to payment for the extraction of something tangible from the land. They say the question whether overriding royalties are interests in land is answered by considering whether the holder of the overriding royalty can be said to have obtained a property interest in unproduced minerals.

[47] In my view*, Dynex* undermines the fundamental proposition relied on by Miller J. in *Skoretz* which was adopted by the Alberta Court of Appeal in *Northland Bank* – that an interest in land cannot be created by an agreement that does not give the rights-holder a remedy to recover the real property upon default.

[48] The rule propounded in the Alberta cases is, thus, an insufficient answer to the question posed by Di Castri: whether an assignment, as distinct from a reservation of rents by a lessor is capable of constituting an interest in land. The two Saskatchewan cases that post-date *Dynex* and state that an assignment of rents does not create an interest in land – *Swenson* and *Nicolson* – merely cite or follow the Alberta line of cases. As a result, their utility in answering the question before us is similarly limited.

[49] In my view here, as in *Dynex*, the question is whether there is a good reason in principle to distinguish between reservations of rents and assignments (particularly assignments entered into as a condition of sale and registered against title). In my opinion, just as the overriding royalties considered in *Saskatchewan Minerals* and *Dynex* were essentially identical to lessor's royalties, so, the assignment of rents utilized by the parties in this case was essentially identical to a reservation of rents. There is no reason in principle why they should not receive the same treatment in law, provided the parties intend the assignment to be an interest in land.

[50] The trial judge, for that reason, did not err in concluding that the question before him hinged upon whether it could be said that the parties intended the covenant to run with the land.

Does the Assignment create a negative covenant?

[51] The appellant's first objection to the running of the assignment with title to the land is their submission that the assignment of rents cannot do so because it imposes positive obligations upon them. Relying upon *The Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corporation,* 2017 BCSC 71, notice of appeal filed (February 15, 2017) at paras. 44-45; *Westbank Holdings Ltd. v. Westgate Shopping Centre Ltd.*, 2001 BCCA 268 at para. 16; and *Heritage Capital Corp. v. Equitable Trust Co.*, 2016 SCC 19 at para. 25, they argue that while the courts will enforce a negative covenant against land, they will not enforce a positive covenant against a successor in title.

[52] I agree with the respondents' characterization of the Assignment of Rents in this case. It does not impose a positive obligation on the original owners of the land or their successors. The respondents helpfully draw our attention to the decision in *Rhone v. Stephens,* [1994] 2 A.C. 310 (H.L.), where the Court states at 318:

> … [A] positive covenant compels an owner to exercise his rights. Enforcement of a negative covenant lies in property; a negative covenant deprives the owner of a right over property.

[53] The Assignment of Rents in this case deprives the owners, the appellants, of a right over property, the right to receive the surface rents; it does not compel them to exercise a right or positive obligation.

The effect of registration

[54] The appellants say the trial judge wrongly emphasized the registration of the Assignment. The fact the Land Title Office accepts assignments of rents for registration, using "Form C", pursuant to s. 5A.17(1)(a) of the *Land Title Electronic Forms Guidebook,* they say, is of little consequence because there is no express statutory authority for the recognition of assignments of rents as valid charges capable of running with title in British Columbia.

[55] Our *Land Title Act*, R.S.B.C. 1996, c. 250, defines a "charge" as "an estate or interest in land less than the fee simple", including encumbrances. The *Act* does not define "an estate or interest in land". An "encumbrance" is defined broadly to include "a judgment, mortgage, lien, Crown debt or other claim to or on land created or given for any purpose, whether by the act of the parties or any Act or law, and whether voluntary or involuntary" (emphasis added).

[56] It should be borne in mind that s. 26 provides:

> (1) A registered owner of a charge is deemed to be entitled to the estate, interest or claim created or evidenced by the instrument in respect of which the charge is registered, subject to the exceptions, registered charges and endorsements that appear on or are deemed to be incorporated in the register;
>
> (2) Registration of a charge does not constitute a determination by the registrar that the instrument in respect of which the charge is registered

> creates or evidences an estate or interest in the land or that the charge is enforceable.
>
> [Emphasis added.]

[57] Section 26(2) is, in my view, dispositive of the argument that the adoption of the Form "C" registration process by the Registrar or the registration of the Assignment of Rents in this case constituted a determination by the Registrar that this, or any such assignment could create an interest in land.

[58] While I share the view expressed in the Alberta cases that registration of a charge is not evidence of its validity, registration may, nevertheless, be cogent evidence of the parties' intentions. As the judgment in *Dynex* makes clear, some weight can be placed upon the parties' registration of the Assignment as evidence of their intentions. It was for that purpose registration was considered by the trial judge.

The intentions of the parties to the Assignment

[59] The critical question is whether the parties to the Assignment intended to create an interest in the land. That question should be answered by looking at the objective evidence of their intentions as embodied in the agreement. It is a question of mixed fact and law, calling for the deference described in *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53.

[60] The appellants refer us to *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 1746, where the issue was whether a party to a royalty agreement relating to coal licenses obtained an interest in land or simply a contractual right to the royalties. The Court there had the benefit of the judgment in *Dynex* and, as a result, sought explicit references to an intention to create an interest in land in the contract. Fitzpatrick J. reviewed the royalty cases comprehensively, paying particular attention to the wording used by the contracting parties in those cases. That useful summary, in abridged form, follows:

> [54] [In] *St. Lawrence Petroleum Ltd. v. Bailey Selburn Oil & Gas Ltd. and H.W. Bass & Sons, Inc.,* [1963] S.C.R. 482 … a participation agreement … provided, in clause 10b, that the participant would be paid a "percentage of net proceeds of production".

[55] The Court found … at p. 488, that these rights were rights to receive money as a matter of contract, and not an interest in land ….

[56] … [In] *Saskatchewan Minerals v. Keyes,* [1972] S.C.R. 703 … a royalty agreement … provided for a royalty per ton on all anhydrous salt "produced and sold from the said leasehold property". At 709, Martland J., for the majority, doubted that the use of the word "royalty" implied any intention to create an interest in land. While not deciding the point, the majority thought the relevant provision was similar to what had been considered in *St. Lawrence* such that only a contractual right, and not an interest in the land, arose.

[57] … [In] *Vanguard Petroleums Ltd. v. Vermont Oil & Gas Ltd.,* [1977] 2 W.W.R. 66 (Alta. S.C.), the Court found that the language used - payment of a royalty based on production - was an obligation to pay money rather than an interest in the land. In this case, and others that followed *Vanguard*, an important factor was that the royalty was to be paid only once the substances had been removed from the lands.

…

[59] This same reasoning was followed in *Vandergrift,* where the royalty was to be paid on petroleum substances "recovered" from the land. Again, the Court, at p. 28, found that the language used evidenced that the parties intended only a contractual right to the payment of the royalty, rather than a conveyance of, or reservation of, an interest in land ….

[60] This type of language is to be distinguished from that discussed in *Bensette and Campbell v. Reece*, [1973] 2 W.W.R. 497 (Sask. C.A) …. In that case, at p. 500, the words "royalty in all the … minerals … which may be found in, under or upon the lands" were found to be sufficient to support the conclusion that there was a conveyance of an interest in the minerals themselves *in situ* and, therefore, an interest in the land.

…

[62] In *Canco Oil & Gas Ltd. v. Saskatchewan*, [1991] 4 W.W.R. 316 (Sask. Q.B.), the Court found that the royalty was an interest in the land. That determination, however, was based on the use of the words "grant, assign, transfer and convey", and also the clear statement in the agreement that the interest conveyed was an interest in land and was to run with the land.

[63] Similar formal words of conveyance are found in *Blue Note Mining Inc. v. Merlin Group Securities Ltd.,* 2008 NBQB 310. There, the agreement provided:

> [7] ... East West Caribou Mining Limited … hereby grants to East West Minerals N.L. … a freely assignable 10% net profits interest in the mine….
>
> [Emphasis added by Fitzpatrick J.]

The highlighted portions of the above agreement were found to evidence an intention to establish an interest in the land.

> [64] … [In] *Scurry-Rainbow Oil Ltd. v. Galloway Estate*, [1993] 4 W.W.R. 454 (ABQB); aff'd [1995] 1 W.W.R. 316 (Alta. C.A.) … [the] court referred to such formal language as establishing an interest in land:
>
> > [102] In my opinion O'Leary J. did not give sufficient weight to some of the other words used in cl. 2. I refer in particular to the verbs "grant, bargain, sell, assign, transfer and set over"; to the descriptors "all the estate, right, title, interest, claim and demand whatsoever, both at law and equity"; the words "to have and to hold"; and the words "unto the Trustee, its successors and assigns forever". Taken together, these words seem to me more like words describing in perpetuity property rights than they do words describing a relatively temporary arrangement (such as a contractual right) which would be unenforceable against the Owner once he sold the property.
>
> [65] … [In] *St. Andrew Goldfields Ltd. v. Newmont Canada Ltd.*, [2009] O.J. No. 3266; aff'd 2011 ONCA 377, where much of the above reasoning in the authorities was discussed and applied:
>
> > …
> >
> > [101] The use of the words "covenants and agrees to pay" and "produced" in the description of the Barrick royalty is the first indication that the parties intended to create only contractual rights to the payment of a royalty and not an interest in land.
> >
> > …
> >
> > [103] Other relevant factors to determine the parties' intention to create contractual rights or an interest in land are: whether the royalty holder retains a right to enter upon the lands to explore for and extract the minerals: *Vandergrift v. Coseka Resources Limited*, *supra*, at pp. 28 to 29; and whether the owner of the lands is in complete control of its interest in the lands acquired with the only right in the royalty holder being to share in the revenues produced from the minerals extracted from the lands: *St. Lawrence Petroleum Limited v. Bailey Selburn Oil & Gas Ltd.* (*No. 2*), *supra*, at pp. 32 to 33.

[61] The review of the wording and context in the cases summarized by Fitzpatrick J. illustrates the extent to which, in the words of *Sattva* at para. 50, this is an exercise in applying the principles of contractual interpretation to the words of the written contract, considered in light of the factual matrix.

[62] The appellants say the trial judge erred in finding the Assignment created an interest in land when here, as in *Mychaluk* and *Nicolson*, the subject matter of the contract was expressly described in the recitals as "compensation". In my view, that could only be considered an error in law if an agreement to pay compensation could never convey an interest in land. That is not so.

[63] The appellants say that in the case at bar, there is no provision, such as in *Canco,* that the Assignment relates to and constitutes an interest in the land. Again, in my view, the absence of such a provision is not determinative and the trial judge cannot be said to have erred in law by failing to consider that to be so.

[64] The Assignment, in clause 7, is expressly said to "enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns." It does not specifically refer to successors in title. In that regard, it is ambiguous. Having described the assignee as the registered owner, the reference to the assignee's "successors" may be a reference to successors in title to the property, but it may equally refer to his successors as a contracting party. While the Assignment was open to interpretation, particularly in light of the reference in the recitals to a "successor in title" when referring to the lessee, I would not describe the failure to attribute weight to the ambiguity to be an error in law.

[65] The Assignment was entered into at the time of the conveyance of the property by the Bodes. Uncertainty with respect to their intentions might have been avoided by reserving rents from the conveyance. Further, the Assignment of Rents might have been expressly referred to in the conveyance.

[66] On the other hand, the trial judge expressly found that the Bodes' and Foothills' intention to create a registrable interest that ran with the land was "manifest from the wording of the Assignment of Rents itself and their conduct". Specifically, he considered that:

a) the Assignment was given from the purchaser of real property to the vendor and the document itself describes the Assignment as a term of the transfer, to be registered concurrent with the registration of the transfer;

b) the compensation under the agreement is defined as rent paid pursuant to a lease for continuing use of the land;

c) the Assignment contemplated that the parties to the lease might change, or that the lease would be "replaced", while the Assignment of Rents continued to remain in force;

d) the party paying the rent is defined in respect of their status as occupier of the land;

e) the rights-holder under the Assignment was granted full authority to deal with any subsequent occupant of the land;

f) the title-holder agreed not to terminate or otherwise deal with the lease for use of their land without the consent of the rights-holder of the Assignment.

[67] Further, as I have mentioned, the trial judge appropriately placed some weight upon the fact that the Bodes attended to the completion of a Land Title Office Form “C” – General Instrument and registered the Assignment.

[68] In my view, it cannot be said that the trial judge erred in law in taking these factors into account. It is not open to us to re-interpret the contract in the absence of an error in relation to an extricable question of law, or a palpable and overriding error. I would not accede to the argument that the trial judge erred in finding the parties to the Assignment intended to create a registrable interest in land.

Conclusion

[69] In my opinion, the appellants have not identified the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor in the analysis. Nor have the appellants established a palpable and overriding error in the trial judge’s interpretation of the contract. As such, appellate intervention is not justified.

[70] I would dismiss the appeal.

"The Honourable Mr. Justice Willcock"

I agree:

"The Honourable Mr. Justice Savage"

I agree:

"The Honourable Mr. Justice Hunter"

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CLEARBEACH RESOURCES INC. AND FORBES RESOURCES CORP.

Court File No. CV-21-00662483-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF EUGENIE GAISWINKLER
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RCP-E 4C (May 1, 2016)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,* R.S.C. 1985, c. C-36, AS AMENDED
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ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
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RCP-E 4C (May 1, 2016)