

October 30, 2020

Dear Mr. Martin Olszynski:

Ruling on the October 13, 2020 Application of Martin Olszynski

On October 13, 2020, the Public Inquiry into anti-Alberta Energy Campaigns (“**Inquiry**”) received an application for standing as a Participant for Commentary as well as an application under section 25 (“**Procedural Application**”) of the Rules of Procedure and Process (“**Rules**”). As I granted Prof. Olszynski’s application for standing as a Participant for Commentary, I considered Prof. Olszynski’s Procedural Application. In this ruling, Prof. Olszynski is referred to as the “**Applicant**”.

The Procedural Application challenges the Ruling on Interpretation of the Terms of Reference (“**Ruling on Interpretation**”), as amended and requests a reconsideration of the Ruling on Interpretation or alternatively that a request be made to the Lieutenant Governor-in-Council for amendments to the Terms of Reference.

For the following reasons, I decline to grant the Procedural Application.

1. Interpretation of the Terms of Reference

The Applicant asserts that the Ruling on Interpretation is unreasonable in its interpretation of the Terms of Reference. Specifically, the Applicant asserts the Terms of Reference require the Inquiry to consider whether development of Alberta’s oil and gas resources is “economic, efficient and responsible”, and that the Ruling on Interpretation unreasonably conflates these words with “some level of oil and gas development in Alberta”.¹

The Applicant’s submission criticises my Ruling on Interpretation for failing to consider the Terms of Reference using the accepted method of statutory interpretation: that is, to consider the text, context and purpose of the provision. The Applicant asserts that a plain textual reading of the Terms of Reference require the Inquiry to determine whether a given oil and gas development opposed by a campaign was “timely, economic, efficient and responsible”. The Applicant submits that the Terms of Reference do not refer to individual projects, such that the Terms of Reference do not require the Inquiry to consider individual oil and gas projects and that the Terms of Reference require a determination of “whether a given campaign attempted to delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources.”²

¹ Procedural Application at page 2.

² Procedural Application at page 2.

In the Ruling on Interpretation, I considered the Terms of Reference as a whole and in light of their text, context and purpose, including the preamble, which is set out in the Order in Council 125/2019.³ This preamble specifies that the “Government of Alberta is committed to the timely, economic, efficient and responsible development of Canada’s oil and gas industry, including Alberta’s oil and gas industry”. In my view, this statement as well as others in the preamble, imply that some level of oil and gas development in Alberta is “timely, economic, efficient and responsible”.

On this basis, and in order to interpret the Terms of Reference in a manner that would permit the accomplishment of their purpose, I determined that the mandate of the Inquiry is to:

inquire into efforts to frustrate the development of Alberta’s oil and gas resources in a broad and general sense. Such frustration may be a stated objective of a party, or may manifest itself through repeated opposition to attempts to develop Alberta’s oil and gas resources or opposition to a particular project in furtherance of an intention of opposing development of Alberta’s oil and gas resources in a broad and general sense. For clarity, I do not consider that a party is attempting to oppose the development of Alberta’s oil and gas resources in a broad and general sense solely by reason of such party opposing a discrete aspect of a single project, or by isolated opposition on specific grounds to a particular project (such as where a party’s interests in land or traditional rights may be directly affected).⁴

I find that the Applicant’s submission focusses disproportionately on twelve words taken in isolation: “timely, economic, efficient and responsible development of Alberta’s oil and gas resources”. In particular, I find it does not interpret these words appropriately within their broader textual setting and within the broader context of the purpose of the Terms of Reference, including the definition of “anti-Alberta energy campaign”.

The Applicant’s submission that the Terms of Reference require me to “determine whether a given campaign attempted to delay or frustrate the timely, economic, efficient and responsible development of Alberta’s oil and gas resources”, fails to address the profound practical problems associated with assessing a given oil and gas development against the “economic, efficient and responsible” standard.

As I explained in the Ruling on Interpretation, engaging in such an analysis appears to entail taking the Inquiry into the jurisdiction of expert regulatory bodies, and, in at least some cases, second-guessing extensive and complex economic viability analysis done by project proponents, which I

³ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 120.

⁴ Ruling on Interpretation at para 6.

consider beyond the scope contemplated by the Terms of Reference. Additionally, the Applicant's proposed approach would present the Inquiry with an insurmountable hurdle that is not practically achievable given the resources and time available to the Inquiry.

For these reasons, I find that the Ruling on Interpretation accords with the principles of statutory interpretation and is a reasonable and correct interpretation of the Terms of Reference.

2. Relevance of the Reports to the Interpretation of the Terms of Reference

The Applicant further submits that my interpretation is unreasonable for failing to address in my reasons the six reports the Applicant submitted to the Inquiry during the public submissions stage, which reports the Applicant argues might assist in carrying out my mandate. In support, the Applicant references the decision of the Supreme Court of Canada in *Vavilov*.

Vavilov is a leading authority on administrative law and is important to the carrying out of the Inquiry's work, but I do not understand the decision as supporting the Applicant's position that in interpreting the Terms of Reference I ought to have considered the reports referenced by the Applicant. The task of statutory interpretation is to determine the intent of the enacting body, in this case the Lieutenant Governor-in-Council. The reports referenced by the Applicant do not bear on the intention underlying the Terms of Reference. They therefore appear to me to be of little assistance in determining the *interpretation* of the Terms of Reference; I do not, however, preclude the possibility that they may be relevant to substantive matters or issues that the Inquiry is considering under the Terms of Reference.

3. Procedural Fairness

Lastly, the Applicant submits that the Ruling on Interpretation denies potentially affected persons a defence to potential adverse findings or allegations of misconduct. This argument rests on the Applicant's interpretation of the Terms of Reference, which I have rejected. As I have stated in the Ruling on Interpretation, the Inquiry will apply the standard of broad and general opposition in the definition of "anti-Alberta Energy Campaign". Any party that may potentially be found to have participated in an "anti-Alberta Energy Campaign" will be provided with an opportunity to adduce evidence showing that it does not meet this definition, as I have interpreted it. The Applicant's submissions would require the Terms of Reference to be interpreted to include a specific defence, which defence would be inconsistent with the definition of "anti-Alberta Energy Campaign" as I have interpreted it.

I find that the Ruling on Interpretation does not breach any duties of procedural fairness.

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4. Disposition

For the reasons stated above, I decline to grant the relief requested by the Applicant.

Yours truly,



J. Stevens Allan

Commissioner