

March 24, 2014

SENT BY FAX**Court of Appeal of Alberta**

Panel in Appeal No. 1301-0346AC

c/o Cara Schlenker, Case Management Officer

TransCanada Pipelines Tower

2600, 45 1 St. S.W.

Calgary, AB T2P 5H1

Fax: (403) 297-5294

Your Honours,

**Re: *Jessica Ernst v. Energy Resources Conservation Board*
Appeal No. 1301-0346AC**

I am writing to respectfully request leave to submit a short reply factum (no more than five pages), in the matter of *Ernst v Energy Resources Conservation Board* (Appeal No. 1301-0346AC), returnable on May 8, 2014. My client, Jessica Ernst (“Ernst” or the “Appellant”) makes this request because the factum of the Energy Resources Conservation Board (“ERCB” or the “Respondent”) recently filed with this Honourable Court raises a new issue that is outside of the grounds of appeal contained within the Notice of Appeal and the Appellant’s Factum.

The Appellant is appealing the order of Wittmann CJQB pronounced on November 18, 2013. The Notice of Appeal sets out three issues/grounds of appeal.¹ Importantly, however, the Appellant is specifically *not* appealing Wittmann CJQB’s finding that “the *Charter* claim of Ernst against the ERCB is valid”.²

¹ The Notice of Appeal and Appellant’s Factum set out the following issues/grounds of appeal:

- 1) Did the Court err in finding that the statutory immunity clause contained within s. 43 of the Energy Resources Conservation Act bars an otherwise valid claim for breach of the right to freedom of expression made pursuant to the Canadian Charter of Rights and Freedoms?
- 2) Did the Court err in finding that the ERCB does not owe a private duty of care to Ms. Ernst?
- 3) Did the Court err in finding that the statutory immunity clause contained within section 43 of the Energy Resources Conservation Act bars Ms. Ernst’s claim against the ERCB for negligent omissions?

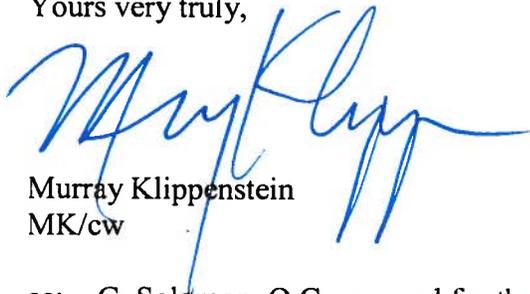
Appellant’s Factum at para 20; Notice of Appeal [Appeal Record at F44]

² Reasons of Wittmann CJ at paras 88 & 130 [Appeal Record at F29 & F39].

The Respondent has chosen not to file a Notice of Cross Appeal. Nonetheless, the Respondent's Factum raises an additional and novel issue: the Respondent argues, in direct opposition to the finding of Wittmann CJQB, that the Appellant's *Charter* claim is *not* valid because, it is argued, the ERCB did not limit the Appellant's right to free expression.³ This issue was not raised in the Notice of Appeal, the Appellant's Factum or any Notice of Cross Appeal.

As a matter of procedural fairness, the Appellant requests leave to file a brief reply factum of no more than five pages, together with supporting authorities, to be filed no later than April 11, 2014 in order to address this new issue raised by the Respondent.

Yours very truly,



Murray Klippenstein
MK/cw

cc: G. Solomon, Q.C., counsel for the Respondent ERCB, by fax: 403-571-1528

³ Factum of the Respondent, at paras 57 – 63.