

**FAX TRANSMISSION**  
**(Rule 20(2) of the Rules of the Supreme Court of Canada)**

<b>Title of document:</b>	Reply of the Proposed Intervener, The David Asper Centre for Constitutional Rights, to the Response of the Respondent, Alberta Energy Regulator, with respect to Asper Centre's motion for leave to intervene	
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October 19, 2015

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DELIVERED

File 09830.00002

Mr. Roger Bilodeau, QC  
Registrar  
Supreme Court of Canada  
301 Wellington Street, Room 156  
Ottawa, ON K1A 0J1

Dear Mr. Bilodeau:

**Re: *Jessica Ernst v Alberta Energy Regulator*; SCC Court File No. 36167**

We represent the Proposed Intervener, the David Asper Centre for Constitutional Rights ("Asper Centre"). This letter is in response to the submissions made by the Respondent, the Alberta Energy Regulator. The Respondent argues (i) that the Canadian Civil Liberties Association ("CCLA"), the British Columbia Civil Liberties Association ("BCCLA") and the Asper Centre take highly similar positions; (ii) that the Asper Centre enters the fray between the parties on the issue of whether the appellant's *Charter* claim makes out a valid cause of action; and (iii) that the Asper Centre's factum should be limited to 5 pages and its oral representations limited to 5 minutes.

**Distinctive position of the Asper Centre**

The Asper Centre has distinguished itself from the other Proposed Interveners, the CCLA and BCCLA. The Asper Centre's submissions will focus on the limited immunity from *Charter* liability available in the common law and under s. 24(1) of the *Charter* and the anomaly that would result should a general statutory immunity clause be allowed to prevail over the *Charter* and to fetter the remedial discretion of trial judges as supervised by appellate courts.

The BCCLA's and the CCLA's submissions do not duplicate the Asper Centre's position. The BCCLA's submissions focus on the role of limitation periods and the analogy to privative clauses, while the CCLA's submissions argue that a provincial government cannot be free to immunize itself fully from liability through a statutory immunity provision more generally.

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WeirFoulds<sup>LLP</sup>**The Asper Centre does not enter the fray between the parties**

The Asper Centre's submissions will not focus on the validity of the cause of action. However, the Court of the Queen's Bench did hold that the appellant's *Charter* claim may make out a valid cause of action, a finding that the Court of Appeal of Alberta did not overturn and which is not at issue in this appeal.

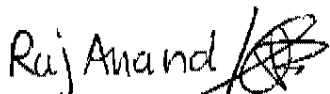
**Length of factum and oral submissions**

The Asper Centre requests that it should be permitted to file a factum not exceeding 10 pages and to make oral arguments of such length as this Honourable Court may deem appropriate, in accordance with the rules.

The Attorney General of Canada, the Attorney General for Saskatchewan, the Attorney General of British Columbia, and the Attorney General of Quebec will be intervening and making submissions in this appeal. Each attorney general is entitled to file a factum not exceeding 20 pages, pursuant to subsection 42(5) of the *Rules of the Supreme Court of Canada* (the "*Rules*"), and to make oral submissions not exceeding 10 minutes, according to clause 71(5)(c) of the *Rules*.

While the Respondent asserts that "there is a real prospect that the Interveners will have more pages and time dedicated to the Charter remedies issue than the Respondent will", it neglects to acknowledge that there are four attorneys general intervening in this appeal. Accordingly, it is unlikely that the Asper Centre's request with respect to the length of its submissions will have the effect of creating an unbalanced playing field.

Yours truly,



Raj Anand and Cheryl Milne

cc: Glenn Solomon, QC, Counsel for the Respondent, the Alberta Energy Regulator  
Murray Klippenstein & W. Cory Wanless, Counsel for the Appellant, Jessica Ernst  
Christopher M. Ruper, Counsel for the Intervener, Attorney General of Canada  
Graeme G. Mitchell, QC, Counsel for the Intervener, Attorney General for Saskatchewan  
Jonathan G. Penner, Counsel for the Intervener, Attorney General of British Columbia  
Robert Desroches & Carole Soucy, Counsel for the Intervener, Attorney General of Quebec  
Avnish Nanda & Dev S. Nanda, Counsel for the Proposed Intervener, Donna Frances Dahm and Robert Plus Plowman  
Stuart Svonkin, Brendan Brammal & Michael Bookman, Counsel for the Proposed Intervener, Canadian Civil Liberties Association  
Ryan D.W. Dalziel & Emily C. Lapper, Counsel for the British Columbia Civil Liberties Association