

Appeal Number: 1301-0346AC

Q. B. Number: 0702-00120

IN THE COURT OF APPEAL OF ALBERTA

JUDICIAL CENTRE OF ~~DRUMHELLER~~ CALGARY

BETWEEN:

JESSICA ERNST

Appellant
(Plaintiff)

- and -

ENERGY RESOURCES CONSERVATION BOARD

Respondent
(Defendant)

- and -

**ENCANA CORPORATION and
HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA**

NOT A PARTY TO THE
APPEAL
~~Interested Parties~~
(Defendants)

Civil Notice of Appeal

1. **Appeal from:** Order.

Portion being appealed (r. 511):

Paragraphs 1, 2 & 5 of the Order.

Description of the issues:

The Appellant appeals from the decision of the Honourable Chief Justice Neil Wittmann striking the Appellant's a) negligence claim and b) claim made pursuant to the *Canadian Charter of Rights and Freedoms* both made against the Energy Resources Conservation Board ("ERCB").

The present Appeal raises three issues:

1. Did the Court err in finding that the statutory immunity clause contained within section 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?

Where order originated:**Court of Queen's Bench**

File Number: 0701 00120
 Location: Hearing held in Calgary, proceeding based in Drumheller.
 Justice: The Honourable Chief Justice Neil Wittmann.

2. Particulars of Order Appealed from:

Date Pronounced: November 13, 2013.
 Date Entered: December 2, 2013.
 Date Served: December 2, 2013.
 Copy Attached.

3. **If the order originated in the Court of Queen's Bench, indicate the type of order that is under appeal:**

Final order or refusal to grant final order before trial (order striking pleadings).

4. (a) **Is this appeal about procedure or custody or access only under part J of the consolidated practice directions?**

No.

- (b) **Is this a family law appeal?**

No.

5. **Has this file been under case management in the court of Queen's Bench?**

Yes.

Case management justice: The Honourable Chief Justice Neil Wittmann.

Trial date: None scheduled.

6. **Is this case related to any case presently before or about to be filed in this court?**

No.

7. **Is the constitutional validity of an Act or Regulation being challenged as a result of this appeal?**

No. The appeal, however, does relate to a claim made under s. 24 of the *Canadian Charter of Rights and Freedoms*.

8. **Has mediation been attempted in the trial court?**

No.

9. **Are you willing to participate in Judicial Dispute Resolution with a view to settlement or crystallizing of issues?**

No.

10. Would case management be beneficial?

No.

11. Could this matter be decided without oral argument?

No.

12. Should the appeal be expedited?

No.

13. Is there a statutory ban, ban on publication or an order of the court which affected the privacy status of this file?

No.

14. Appellant's estimated time of argument:

45 minutes.

15. List respondent or counsel for the respondent:

JSS BARRISTERS
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Calgary, Alberta T2P 1C2

Glenn Solomon
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Fax: (403) 571-1528

Lawyers for the Defendant Energy Resources Conservation Board

List interested parties or counsel for the interested parties:

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Barristers & Solicitors
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Calgary, AB T2P 5H1

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Phone: (403) 260-7003
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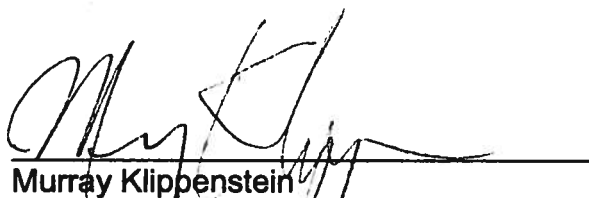
Lawyers for the Defendant EnCana Corporation

ALBERTA JUSTICE – CIVIL LITIGATION
#1710, 639 -5th Avenue S.W.
Calgary, AB T2P 0M9

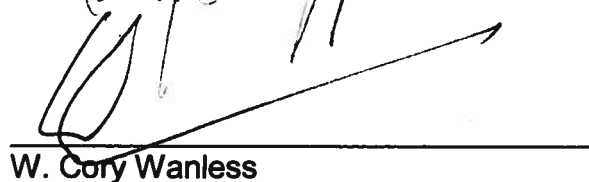
Neil R. Boyle and Nancy A. McCurdy
Phone: (403) 297-3790
Fax: (403) 662-3824

Lawyers for the Defendant Her Majesty the Queen in Right of Alberta

Signed by Appellant's counsel on December 5, 2013.



Murray Klippenstein



W. Cory Wanless

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Lawyers for the Plaintiff, Jessica Ernst

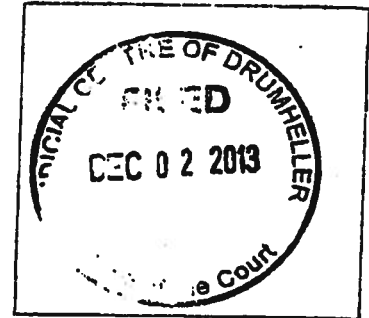
COURT FILE NUMBER 0702-00120

COURT Court of Queen's Bench of Alberta

JUDICIAL CENTRE Drumheller

PLAINTIFF(S) JESSICA ERNST

DEFENDANT(S) ENCANA CORPORATION, ENERGY RESOURCES CONSERVATION BOARD and HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA



DOCUMENT Order

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT KLIPPENSTEINS Barristers & Solicitors 160 John Street, Suite 300 Toronto, Ontario M6H1V2 Murray Klippenstein/ Cory Wanless Phone: 416-598-0288 Fax: 416-598-9520

DATE ON WHICH ORDER WAS PRONOUNCED: November 13, 2013
NAME OF MASTER/JUDGE WHO MADE THIS ORDER: The Honourable Chief Justice Wittmann
LOCATION OF HEARING: Court of Queen's Bench, Calgary, Alberta

UPON THE APPLICATION of the Applicant, Energy Resources Conservation Board; AND UPON the Application of Her Majesty the Queen in Right of Alberta; AND UPON having read and reviewed the pleadings and the proceedings herein, including the written Briefs of the parties and Authorities submitted by the parties; AND UPON having reviewed the transcripts of the submissions made by the parties; AND UPON having provided Written Reasons for Decision:

IT IS HEREBY ORDERED THAT:

- 1. The Application of the Energy Resources Conservation Board to strike the claims against the Energy Resources Conservation board in negligence, namely paragraphs 24 through 41 of the Fresh Statement of Claim, is granted, and the said paragraphs are struck in respect of the Energy Resources Conservation Board.

- 2 -

2. The Plaintiff's claims for a personal remedy for a *Charter* Breach against the ERCB are struck, and, in the alternative, dismissed.
3. Her Majesty the Queen in Right of Alberta's Application to strike paragraphs, or portions thereof, of the Fresh Statement of Claim is dismissed.
4. The Plaintiff is hereby awarded costs of and incidental to this Application as against Her Majesty the Queen in Right of Alberta, in any event of the cause.
5. The Energy Resources Conservation Board is hereby awarded the costs of and incidental to this Application, as against the Plaintiff.
6. The Parties may return to this Court to resolve any outstanding issues arising from this Order, including issues relating to costs of the April 2012 Applications in this Action.



The Honourable Neil C. Wittmann
Chief Justice of the Court of Queen's Bench of Alberta

Notice to the Respondent:

A respondent who fails to comply with the requirements of the Alberta Rules of Court and the Court of Appeal Consolidated Practice Directions, within the prescribed time, will not be allowed to present oral argument, nor be entitled to costs, unless otherwise ordered.

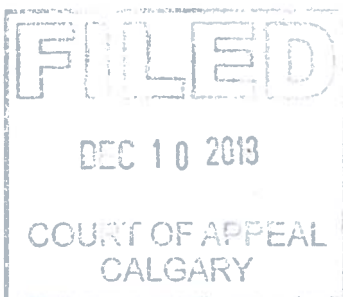
Failure to appear at the hearing may also lead to an order or judgment being made against the respondent in their absence.

Notice to All Parties:

Parties are required to provide an address for service if it is different than the address set out in this document.

Parties are also required to notify the Registrar of any change of address throughout the proceedings, to ensure that they can be contacted at all times.

An address for service within 30 kilometers of the office of the Registrar must be provided (R.5(1)(b)(i))



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Q.B. Number: 0702-00120

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Appellant
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ENERGY RESOURCES CONSERVATION BOARD

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(Defendants)

CIVIL NOTICE OF APPEAL

Address for service:

c/o Jessica Ernst
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Counsel for the appellant:

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