

COURT FILE NUMBER 0702-00120

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE DRUMHELLER

PLAINTIFF JESSICA ERNST

DEFENDANTS ENCANA CORPORATION,
ENERGY RESOURCES
CONSERVATION BOARD, and
HER MAJESTY THE QUEEN IN
RIGHT OF ALBERTA

DOCUMENT APPLICATION BY THE
DEFENDANT, HER MAJESTY THE
QUEEN IN RIGHT OF ALBERTA

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT ALBERTA JUSTICE
Civil Litigation
#1710, 639 - 5th Avenue S.W.
Calgary, Alberta T2P0M9
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NOTICE TO RESPONDENT, JESSICA ERNST

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date: Wednesday, April 16, 2014
Time: 12:00 p.m.
Where: Court House, 511 - 3 Avenue, Drumheller, Alberta

Before Whom: The Honourable Chief Justice N.C. Wittmann

Go to the end of this document to see what else you can do and when you must do it.

REMEDY CLAIMED OR SOUGHT:

1. The Applicant, Her Majesty the Queen in Right of Alberta ("the Province"), seeks an Order:

- a. Striking paragraphs 59-84 and 88 from the Fresh Statement of Claim filed on June 25, 2012 ("Fresh Statement of Claim");
- b. In the alternative, granting Summary Judgment in favour of the Province;
- c. Granting such further and other relief as counsel may advise and this Honourable Court deems just.

GROUNDINGS FOR MAKING THIS APPLICATION:

2. There have been four versions of a Statement of Claim filed in this action. The Province previously applied, pursuant to Rule 3.68, to strike paragraphs 64-67, 69, 70, 72, 74, 75, 77, 79, 84 and 85 of the Fresh Statement of Claim. The grounds for this prior application were that these paragraphs were improper or contained defects, and did not comply with the Rules of Court. This application did not address the issue of whether or not the Fresh Statement of Claim disclosed a reasonable cause of action as against the Province. This prior application involved specific consideration of Rules subparagraphs 3.68(2) (c) and (d). The relief sought was the paring down of the Fresh Statement of Claim so that a more cost-effective determination of the merits of the case could be arrived at.
3. Pursuant to Rule 3.68(1) (a) and 3.68(2) (b) of the *Alberta Rules of Court*, all of the claim may be struck out if the pleading discloses no reasonable claim.
4. Paragraphs 59-84 and 88 of the Fresh Statement of Claim do not disclose a reasonable claim as against the Province. No private duty of care exists between the Plaintiff, Ms. Ernst, and the Province.
5. This claim does not fall within the established categories of proximity, nor does the relevant legislation, the *Environmental Enhancement and Protection Act*, RSA 2000, c. E-12 ("EEPA") and the *Water Act*, RSA 2000, c. W-3, create a private duty of care to the Plaintiff.
6. Further, the Province is immune from liability for any acts or omissions by any of the Province's employees, agents, contractors, inspectors, investigators, Directors, or person authorized by a Director, for anything done or not done in good faith while carrying out duties or exercising authority in accordance with either or both of the *EEPA* (s. 220) and the *Water Act* (s. 157). This immunity is extended by statute to any failure, without limitation, to do something when that person has discretionary authority to do it but does not do it.
7. Further, or in the alternative, pursuant to Rule 7.3 of the *Alberta Rules of Court*, summary judgment may be granted where there is no merit to a claim.
8. It is plain and obvious that there is no merit to any of the claims brought against the Province in the Fresh Statement of Claim.
9. Such further and other grounds as counsel may advise and this Honourable Court may permit.

MATERIAL OR EVIDENCE TO BE RELIED ON:

10. The Fresh Statement of Claim, and admissions of fact contained therein;
11. Such further and other materials or evidence as counsel may advise and this Honourable Court may permit.

APPLICABLE RULES:

12. Rules 1.2, 3.68, 7.2, and 7.3 of the *Alberta Rules of Court*.

APPLICABLE ACTS AND REGULATIONS:

13. *Alberta Rules of Court*, Alta Reg. 124/2010;
14. *Environmental Enhancement and Protection Act*, RSA 2000, c. E-12, R.S.A. 2000, c. J-2, as amended;
15. *Water Act*, RSA 2000, c. W-3; and,
16. Such further and other acts and regulations as counsel may advise and this Honourable Court may permit.

Any irregularity complained of or objection relied on:

17. See the grounds for this Application.

How the application is proposed to be heard or considered:

18. Before the Honourable Chief Justice Wittmann.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

TO: The Clerk of the Court

AND TO: Murray Klippenstein and Cory Wanless, Klippensteins Barristers & Solicitors,
Counsel for the Plaintiff

Maureen Killoran and Thomas Gelbman, Osler, Hoskin & Harcourt LLP,
Counsel for the Defendant, Encana Corporation

Glenn Solomon, Q.C., Jensen Shawa Solomon Duguid Hawkes LLP,
Counsel for the Defendant, Energy Resources Conservation Board