November 14, 2024

Alberta Utilities Commission
1400, 600 Third Ave. S.W.
Calgary, AB
T2P 0G5

Attention: Patrick Schembri

RE: **Bulletin 2024-20**
Written consultation established on draft amendments to Rule 009: Rules on Local Intervener Costs

Dear Sir,

I have represented a number of intervener groups and landowners before various quasi-judicial tribunals at the Surface Rights Board (SRB) now Land Property Rights Tribunal (LPRT), the Energy Utilities Board (EUB) which transitioned into the Energy Resources Conservation Board (ERCB) then Alberta Energy Regulator (AER) for oil and gas matters and the Alberta Utilities Commission (AUC) for electrical matters. I have also represented landowners before the National Energy Board (NEB) which has now transitioned into the Canadian Energy Regulator (CER). I have been doing so since 2008. I have also been involved in setting a number of landmark court cases at the Court of King's Bench, the Alberta Court of Appeal and the Supreme Court of Canada. I am not a lawyer and have acted as a consultant or agent at all of these venues. I submit that disallowing agents to continue to represent intervener groups before this Commission would be procedurally unfair, prejudicial, biased and lacking in an understanding of the law regarding agents within Canada.

1) Background

There is a common Intervener perspective that the Commission is biased and regulatory captured and that the Commission has a mandate to approve renewable energy projects and connect them to the electrical grid and to facilitate the electrical transmission infrastructure throughout Alberta. There are a number of law firms that focus on representing intervener interests who have developed connections with experts who are willing to challenge this situation. The Intervener perspective is also that such representation doesn't accomplish much, although most costs are covered, and that the Commission expresses appreciation for Interveners showing up but does not compensate for adverse effects because of its Public Interest mandate and that Interveners are paid little for their time and effort, receive a pat on the back and are sent on their way to live with the negative impacts on their personal property and livelihood for the rest of their lives unless they are fortunate enough to be able to move. Interveners realistically have little chance of winning, many think it a waste of time, and there has been little municipal involvement because of the clause 619 of the *MGA* ramifications, lack of standing and no cost eligibility (although this has changed). As a result, Interveners are hopeful that new regulations reflecting some of the Ministerial guidance resulting from the Renewables Pause Inquiry will take some matters out of the hands of the AUC and restrict large-scale renewable energy development in Alberta so that Interveners do not continue to suffer the adverse effects that these types of projects cause.

My perspective different is somewhat different as I regard the AUC as the start of the process whereby information from AUC rulings and the transcripts of hearings can be used at other venues to further intervener interests by stopping projects at the municipal and LPRT level or through further court action.

The ability to engage in this further process is threatened if the AUC enacts rules that prevent Interveners having the freedom of choice of representation that prevent me, a non-lawyer, from representing Intervener groups in the future.

2) Whether Lawyers are required

The Commission has expressed concerns that I'm not a lawyer in recent hearing decisions and cost claims that I have been a part of, for example in the Proteus Alberta Solar Projects **Decision 28325-D01-2024**, where it stated:

> *62. The Commission notes the MD has not hired a lawyer to aid in its submission but instead has retained an agent, D. Bennett, to present its submission to the Commission. While the Commission does permit agents to appear before it, it is important to note that* ***agents cannot provide legal advice or make legal arguments interpreting the statutes that govern applications before the Commission****. The Commission notes that in this instance, no lawyer was consulted or retained to provide this legal opinion. This is particularly problematic in this proceeding as arguments related to jurisdictional issues and Section 619 are fundamentally legal in nature and require a legal interpretation of statute. Given this, and the lack of legal training of the MD's agent, which led to a fundamental misunderstanding of how to apply the Municipal Government Act, the MD's submissions on this point did not contribute to a better understanding of the issues before the Commission.*

The Commission has stated that non-lawyers cannot give legal advice, cannot interpret legislation and cannot have a legal opinion. Notwithstanding that these claims are unsubstantiated and have no basis in law, it is questionable whether the Commission, which has a number of lawyers as Panel members and on staff, is unbiased enough to properly determine the matter. Fortunately, the courts and legislators have opined on the matter as outlined further below.

Notwithstanding the fact that the Rule 009 draft amendments do not prohibit non-lawyers from representing intervener groups, the rules governing administrative procedures before the AUC do not even require the AUC to provide interveners the right to be represented by a lawyer in some cases.[1]

I have represented clients before the EUB/ERCB/AUC, the AER, the SRB/LPRT and the NEB/CER for more than 15 years. Many years ago, Industry challenged my right to represent clients before the SRB and that was quickly dismissed as the SRB

[1] Alberta Utilities Commission Act, section 9(4) and Administrative Procedures and Jurisdiction Act section 6.

recognised that I was a well-known and effective advocate for landowners. There is no prohibition of non-lawyers providing some forms of legal advice, having a legal opinion or interpreting legislation. In fact, I have consulted on legislative changes so why would I not be able to interpret legislation? It would probably come as a surprise to many MLAs and MPs, to be told that they can't interpret legislation because they are not lawyers. The claim that non-lawyers cannot interpret legislation is simply ridiculous.

Current rules at court also allow non-lawyer agents to represent clients in criminal court if the potential sentence is less than 6 months. Why would this Commission then state that non-lawyers cannot represent clients on less weightier matters?

In the Winnifred wind power connection project (Proceeding 26707) a lawyer turned over clients to me because she was not familiar with the AUC process. In the Halkirk 2 wind project amendments Proceeding 27691, one of the interveners that I represented was a lawyer. I have reviewed many renewable energy surface leases for well-known lawyers because they've acknowledged that they are not familiar with them and they recognize that I've dealt with them many times.

The Commission has stated that non-lawyers cannot provide Legal advice. The Law Society of Alberta makes this claim on their website. However, it is not entirely correct. There are different forms of legal advice. For example, readers of this submission should:

i) Not Exceed the speed limit
ii) Not Break laws
iii) Often pay fines instead of fighting them in court
iv) Should not sign many forms of renewable energy surface leases, oil/gas surface leases, or ROW agreements.
v) Use certain techniques to avoid jury duty.
vi) Limit themselves to 10 kph over the speed limit to avoid speeding tickets.

I just gave you legal advice. There is no law preventing me from doing so, in that manner. Many non-lawyers give legal advice in various forms in the course of their

daily business activities. It may be advisable to obtain legal advice from lawyers in many circumstances but the Commission has not properly identified instances, where I broke any rules in advising my clients.

The claim that non-lawyers cannot give a legal opinion is a grey area. Technically, a 'legal opinion' is likely that provided by a lawyer but intervener agents should be able to provide an opinion regarding legal issues to the Commission. Many other Tribunals currently allow this. I've been part of some Proceedings before this Commission where numerous 'legal opinions' have been provided by the lawyers from multiple intervener groups and the Commission Panel is tasked with deciding which opinion is correct. Frankly, whether 'legal opinions' are proffered should not be the issue, the Commission simply has to deliberate which position is correct, regardless of who provided it.

I was recently involved in a matter before the LPRT that dealt with technical legal issues, interpreting the legislation and various rules, and reviewing legal precedent up to the Supreme Court level. The Chair of the LPRT was deciding the matter and it involved two internal requests for review of a Panel decision. The Chair never once challenged my right to participate in the matter as a non-lawyer or to provide argument on behalf of my client. The Chair also repeatedly refused my request to overturn the prior decision so I retained a lawyer to ask the courts to address the matter.

In *Bateman v Alberta (Surface Rights Board)*, **2023 ABSRB 640** the court stated the following:

> *[56]* ***I find that the Decision was unreasonable, in that it was not justifiable, transparent, or intelligible. There are gaps in the analysis that give the Decision the appearance of arbitrariness.*** *There is a lack of connection between the information sought in the application form and the SRB's analysis and decision.* ***The 50% reduction is not justified or explained by the analysis, and is not transparent or explained in a manner that lends itself to judicial review****.*
>
> *[57]* ***The Reconsiderations are similarly lacking in transparency and rationality****. I will address the Reconsiderations further below.*

[69] In my view, the Tribunal's ***conclusion with respect to longstanding practice is not reasonable****. As previously noted,* ***Praskach Farms*** *was decided only five months before the Decision. The longstanding practice that existed prior to* ***Praskach Farms*** *was to award full compensation in almost all section 36 applications. The Tribunal offered no clear justification for the change in practice, other than the increasing number of claims.*

[73] Taking all of this into account, I find that the Decision was unreasonable. It does not align with the rationale and purview of the statutory scheme under which the SRB derived its authority….

[76] In summary, I have concluded that ***the SRB and the Tribunal unreasonably interpreted their statutory authority and that the Decision and the Reconsiderations are not justified in relation to relevant factual and legal constraints, including the governing statute and case law****. I am satisfied that the SRB has some discretion in determining whether full payment will be made under section 36, and may reduce payments in appropriate circumstances. However, the case law from the superior courts, and the purpose and language of the Act, do not justify the current approach of the SRB and the Tribunal to section 36 applications. Even if the SRB and Tribunal had properly interpreted its authority,* ***the SRB Decision suffered from a lack of justification, transparency and intelligibility in determining the reduction of Mr. Bateman's compensation, for the reasons earlier stated. Accordingly, the Decision is quashed.***

I suggest that the Commission's claims that non-lawyers cannot give legal advice, cannot interpret legislation and cannot have a legal opinion suffers the same faults as outlined above. The Commission's question of whether it should change the long-standing practise of allowing non-lawyers to represent interveners is also addressed somewhat in paragraph 69 above.

In the *Lynx v Fulton* (**Court Action File No: 2101-09631**) judicial review, I actually sided with the LPRT when the Operator (Lynx) challenged a LPRT decision regarding one of my clients. I defended within the internal LPRT review proceedings and then retained a lawyer to handle the matter when it was appealed through a court judicial review. The matter again involved technical legal arguments, interpreting the legislation and reviewing court precedence to the Supreme Court level. Neither the Lynx or the LPRT challenged my ability to do so. In the judicial court review, the judge actually issued a bench decision (which is rare) and summarily dismissed Lynx's

arguments as being unreasonable and a waste of time. It is noteworthy, the Lynx did not raise the argument that I had improperly represented *Fulton* by proffering legal advice, interpreting legislation, or providing legal opinion which presumably would be grounds for review if the Commission's position on the matter is legally correct.

The article, "**Lawyer's Monopoly? Think Again: The Reality of Non-Lawyer Legal Service Provision in Canada**" by Lisa Trabucco which I've attached to this submission by email, refutes the Commission's argument that non-lawyers cannot provide legal advice, provide legal opinion or interpret legislation as the Commission's arguments are simply obsolete, without basis in law and simply not correct. I invite the Commission to review it.

Denying interveners the right to choose who represents them also violates well-established principles in expropriation law. In many cases, Commission permits and licenses are the gateway for LPRT right-of-entry proceedings which end up expropriating intervener property and the law requires that they be made whole. Denying them freedom of representation, and the costs of representation, violates this principle.

The Commission's amendments are unclear regarding the Commission's intent, as the proposed rule amendment does not state that non-lawyers would not be able to represent interveners. The Bulletin seems to suggest that the Commission might just deny cost recovery of non-lawyer representative invoices but this would again violate the principles of expropriation law which requires that those who are expropriated are to be made whole which includes paying for representation services.

Interveners also have the right to represent themselves. Attempting to implement a process whereby self-represented interveners, non-lawyer representation, and lawyer representation are governed by different rules of who can submit various forms of evidence, submit legal opinion and interpret legislation would be inefficient, ineffective, discriminatory, procedurally unfair and lead to a two-tier system of representation that would complicate matters. It would also complicate the cost

claim process if the Commission had to go through each line item to decide whether 'lawyer status' was necessary to claim that line item cost.

3) Awarding costs to agents

Who is raising the issue of whether non-lawyer representatives should continue to be able to claim costs at Commission proceedings? Who is complaining? It appears that I am being specifically targeted as I'm not aware of other non-lawyers that are representing Intervener groups before the Commission to the extent that I am doing.

It would seem that Industry would not complain as they would appreciate the non-lawyer invoice that it often 25% of the cost of lawyer representation. I generally don't waste time providing expert evidence that the Commission tends to ignore and my cost claims are quite conservative. I am also not aware of any of my clients complaining, in fact, many come to me after not being satisfied with how their AUC files were handled by other lawyers.

I've often raised the issue that hosting landowner renewable energy surface leases take gross advantage of the landowner, especially in terms of a lack of reclamation security. The Commission has blocked me from adequately examining the issue and in the current Reclamation Security discussions held by Alberta Environment and Protected Areas, the government is indicating that it is 'buyer beware' and that they will not intervene to ascertain whether landowners are being taken advantage of by the renewable energy surface leases that they sign. I therefore find it highly ironic, and somewhat hypocritical, for the Commission to want to implement oversight over whom Interveners can retain as representatives during Commission proceedings but that the Commission is not concerned about whether those hosting landowners had representation when they signed the renewable energy surface lease.

The Commission should also be aware that I'm often retained later during the hearing process where SIPs may have already been filed, and even as late as when evidence has been filed and I don't always control the Intervener process. I live with

the hand that I'm dealt, where many lawyers would simply decline to represent, and I'm hired to listen to what my client wants, not to just simply tell them what to do and ignore many of their concerns.

I also submit that the Commission is improperly denying Interveners the right to submit issues that they're concerned about by restricting mention of certain issues like property devaluation, noise and health concerns unless the Interveners provide expert evidence. I acknowledge that expert evidence may be desired and given greater weight, but court precedence specifically states that it is in the Public Interest for Interveners to have their concerns heard.

The *Alberta Court of Appeal* has provided government tribunals operating within Alberta further guidance relating to how they should treat intervener cost claims. Although the court decision was an appeal of the AUC's sister tribunal, the ERCB/AER, the guidance is still highly relevant (especially paragraphs 29-37).

In **Kelly v Alberta (Energy Resources Conservation Board), 2012 ABCA 19** they stated the following:

[1] ***The general issue on this appeal is whether the appellants are entitled to costs for their intervention in a hearing that was held before the Board.***

[2] The appellants are the owners of lands in the vicinity of oil wells being drilled and operated by the respondent Grizzly Resources. When they became aware of the application by Grizzly Resources to drill the wells in question, they applied for intervener status under section 26 of the Energy Resources Conservation Act, RSA 2000, c. E-10:

26(1) Unless it is otherwise expressly provided by this Act to the contrary, any order or direction that the Board is authorized to make may be made on its own motion or initiative, and without the giving of notice, and without holding a hearing.

(2) Notwithstanding subsection (1), if it appears to the Board that its decision on an application may directly and adversely affect the rights of a person, the Board shall give the person . . . notice of the application, . . . and an adequate opportunity of making representations by way of argument to the Board or its examiners.

The Board denied the appellants standing, holding that they were not "directly and adversely affected". *That decision was appealed to this Court, which allowed the appeal and directed that the Board conduct a rehearing of the well licence applications, at which rehearing the appellants would have standing:* ***Kelly v Alberta (Energy Resources Conservation Board)****, 2009 ABCA 349, 464 AR 315, 14 Alta LR (5th) 261.*

[3] The rehearing was subsequently held. By this time the wells had been drilled, so the focus of the rehearing was whether, or subject to what conditions, Grizzly Resources should be allowed to operate them. ***The Board concluded that the appellants had not demonstrated any risk to themselves from the wells, that the emergency response procedures in place were satisfactory, and that the wells could be operated without any additional conditions****: Re Grizzly Resources Ltd., Decision 2010-028.*

[4] The appellants subsequently applied for an award of costs to defray the expenses incurred as a result of their intervention. The Act allows the Board to grant costs to "local interveners":
The general power to award costs found in the Act is supplemented by Part 5 of the Board's Rules of Practice, AR 252/2007, which incorporate by reference the Board's Directive 031: Guidelines for Energy Proceeding Cost Claims.

[5] ***The majority of the Board concluded that the appellants were not entitled to costs because they did not qualify as "local interveners****": Re Grizzly Resources Ltd., Energy Cost Order 2010-007.*

[22] The third issue on which leave to appeal was granted concerns the scope of the provisions that set out the eligibility of local interveners for a costs award:
In general terms this question can, again, be answered by saying that ***reasonable decisions of the Board on issues respecting costs are not subject to appellate review.***

[29] In this case the majority of ***the Board emphasized the results of the substantive rehearing****.*
The majority noted that the evidence on the rehearing "provided no indication of possible effect" on any of the interveners. ***The determination of whether the appellants were adversely affected, and therefore eligible for a costs award, was therefore heavily results-oriented; success at the hearing was a key, and possibly a decisive, issue****.*

[31] In normal civil litigation costs generally go to the "winner". Civil litigation occurs in a fully adversarial context, and costs awards are designed to encourage settlement, and reasonableness and efficiency in litigation, and to partly compensate the winning party for the expenses of the action. While there are certainly some adversarial aspects to the hearings before the Board, ***the Board processes are not primarily directed towards identifying "winners and losers"; as the Board notes in its factum, its hearings are directed at the public interest. In ascertaining and protecting the public interest, there are, in one sense, no winners or losers. It follows that it is unreasonable to award costs in Board proceedings solely or primarily on some measure of perceived "success" of the intervention. Since one of the primary purposes***

of public hearings is to allow public input into development, all interventions are "successful" when they bring forward a legitimate point of view, whether or not the ultimate decision fully embraces that point of view. The process of the hearing is an end of itself.

[32] ***The wording of ss. 26 and 28 supports the view that "success" of the intervention is not an overriding issue. Both of the sections anticipate development that "may" cause an adverse effect. At the end of the substantive hearing it will be known whether the Board found any adverse effect. If a costs award is to be primarily based on the "success" of the intervention, there would be no need to consider if the hearing "may" disclose such an effect****. The use of the word "may" is inconsistent with the idea that hindsight should be a primary factor in awarding costs.* ***Further, an intervener should not have to predict correctly at the time of intervention what the ultimate outcome of the hearing will be. As this hearing demonstrated, all the evidence, and its full impact, are never completely known until the hearing is over. It is sufficient if, at the beginning of the process, it is reasonable to believe that the evidence "may" disclose an adverse effect****: Re Glacier Power Ltd., Energy Cost Order 2003-09 at p. 3.*

[33] The respondent Board argues in its factum that its mandate is to "ensure the orderly and efficient development of the province's resources". It argues that its functions are not "thwarted simply because every party who appears before the Board may not be entitled to reimbursement" of costs of participation. Orderly and efficient resource development is undoubtedly the objective of the Act in a global sense, ***but the purpose of the standing and hearing sections of the Act is to allow people to be heard. The development of Alberta's natural resources enriches the province as a whole, and provides significant economic benefits to the companies that develop those resources. Resource development can, however, have a disproportionate negative effect on those in the immediate vicinity of the development. The requirement for public hearings is to allow those "directly and adversely affected" a forum within which they can put forward their interests, and air their concerns. In today's Alberta it is accepted that citizens have a right to provide input on public decisions that will affect their rights.***

[34] In the process of development, the Board is, in part, involved in balancing the interests of the province as a whole, the resource companies, and the neighbours who are adversely affected: Re Suncor Energy Inc., Energy Cost Order 2007-001 at pp. 10-11. ***Granting standing and holding hearings is an important part of the process that leads to development of Alberta's resources. The openness, inclusiveness, accessibility, and effectiveness of the hearing process is an end unto itself. Realistically speaking, the cost of intervening in regulatory hearings is a strain on the resources of most ordinary Albertans, and an award of costs may well be a practical necessity if the Board is to discharge its mandate of providing a forum in which people can be heard.*** *In other words, the Board may well be "thwarted" in discharging its mandate if the policy on costs is applied too restrictively.* ***It is not unreasonable that the costs of intervention be borne by the resource companies who will reap the rewards of resource development.***

[35] The third question can be answered by stating that any reasonable decision of the Board respecting costs is not subject to appellate review. However, it is not reasonable to require

physical damage to the lands to establish eligibility for costs, nor is it reasonable to make an award of costs overly dependent on the outcome of the hearing.

[37] In the circumstances, the appropriate remedy is to allow the appeal and remit the application for costs back to the Board for reconsideration, in a manner consistent with these reasons. For clarity, ***a potential adverse impact on the use and occupation of lands is sufficient to trigger entitlement to costs****. Further, while the amount of costs to be awarded lies within the discretion of the Board****, the actual outcome of the hearing, and the absence, with hindsight, of any actual adverse effect does not of itself disentitle an applicant to costs****.*

The Alberta Court of Appeal has recognized that interveners have the right to present their case and that cost awards should not just be based on the level of success that they have during tribunal hearings. The cost of participating in these types of matters is a burden and one of the purposes of the cost award process is to level the playing field.

The AUC has also recognized that Interveners who contribute to a better understanding of the issues before the Commission should be entitled to costs.

In **AUC Decision 2013-195**, one of the MATL cost decisions, the Commission stated,

9. In exercising its discretion to award costs, the Commission will in accordance with Section 7 of Rule 009, consider whether an eligible participant ***acted responsibly and contributed to a better understanding of the issues before the Commission, and whether the costs claimed are reasonable and directly and necessarily related to the proceeding****. The Commission considers these factors in light of the scope and nature of the issues in question.*

10. In the Commission's view, the responsibility to contribute positively to the process is inherent in a proceeding. The Commission expects that those who choose to participate will prepare and present a position that is reasonable in light of the issues arising in the proceeding and necessary for the determination of those issues. To the extent reasonably possible, the Commission will be mindful of a participant's willingness to co-operate with the Commission and other participants to promote an efficient and cost-effective proceeding.

I tend to listen more to my clients and am willing to allow them to submit information regarding issues that they believe should be heard, regardless of how the Commission may treat the issue (within reason) than some lawyers would.

a) My Qualifications to represent Interveners

The Commission has raised the issue of whether agents have the qualifications to represent interveners in an increasingly complex and technical environment. I have been told that I cannot provide legal advice, cannot interpret legislation and am not allowed to advance legal arguments. Despite the fact that these two claims have no basis in Canadian law and are in fact incorrect (which is addressed above), the Commission further worries that agents are not subject to oversight by the Law Society, don't enjoy the benefit of lawyer-client privilege, may lack a duty of confidentiality, aren't required to provide a professional standard of care and lack liability insurance. I submit that many of these factors are not within Commission jurisdiction and that Interveners are capable of choosing their representation by themselves.

To begin with, I've been representing clients before the various Alberta and Federal tribunals for more than 15 years and the notion that most lawyers can provide representation services at the level that I provide, is absurd. It appears that the Commission is willing to accept a novice lawyer, with no experience, over a well-experienced representative simply because of its bias against non-lawyers. How would an inexperienced lawyer make those increasingly complex, technical legal arguments if they are not familiar with the legislation or precedent?

I've been requested to represent a number of knowledgeable interveners who have been to a number of AUC hearings and didn't like the results. I've also turned down at least 5 representation requests for AUC proceedings this last year because I've been too busy and I ended up referring them to another law firm. I'm also currently involved in three active proceedings before the Commission, Willow Ridge wind project (27837), Radiant Dawn solar project (29267) and the Chin Renewable Energy project (29294) and have been contacted regarding opposing other renewable energy projects in Alberta.

I am also a farmer with 'expertise' and many years experience regarding weeds, drainage and irrigation, soil erosion and aerial spraying. I am also a Director of the Alberta Surface Rights Federation and Action Surface Rights Association (and have

been for years) which are well-known landowner associations that act to protect property rights in Alberta.

Post -secondary education

I have a Bachelor of Arts Degree with a double major in economics and political science which included some law courses. I also have a Bachelor of Management Degree with a double major in accounting and finance. I graduated with Great Distinction from the University of Lethbridge, earning the 1994 Faculty of Management Gold Medal.

I participated in the June 2017 Legal Education Society of Alberta (LESA) "Rural Property Issues for Alberta Lawyers" training seminar and was not only the only non-lawyer in the room, but I was on the panel conducting the training of the new lawyers in the room. Nobody questioned my right to have a legal opinion, interpret legislation or give certain forms of legal advice in that seminar. I was also invited back to be on another LESA panel but COVID disrupted that session.

I am also one of the few individuals that have been appointed a "McKenzie friend" before the court as I was asked to help a lady in her divorce trial where her husband was represented by a senior, and well-known divorce lawyer, that culminated in *Milne v Milne*, **2009 ABQB 361** where the lady won on all but one of the issues that was raised.

Surface lease Negotiations

I have participated in at least fifty renewable energy solar and wind contract negotiations, often negotiating with lawyers throughout the world as I seek better terms for my clients. I have written and adjusted numerous renewable energy leases. I have consulted with the AER and AEPA on numerous issues and participated in seminars discussing the implementation and formulation of the 2018 *Conservation and Reclamation Directive*. I recently was requested to make a submission regarding the AEPA's development of a Renewable Energy Reclamation Security and participated in meetings discussing the topic with them. I was requested to make a submission regarding Bill #2-The Responsible Energy Development Act and did so. I

have consulted with numerous municipalities regarding their Land Use Bylaw amendments. I've reviewed many renewable energy surface leases for other lawyers, and I've been introduced by FAO staff as probably the most knowledgeable person concerning renewable energy surface leases in Alberta.

I also participated in the AUC's Distribution Inquiry (Proceeding 24116) which examined electrical distribution and transmission system issues and the 'Renewables Pause Moratorium Inquiry" (Proceeding 28501) and represented landowners and Industrial groups in both proceedings.

Landmark Tribunal cases

As outlined elsewhere in this submission, I participated in the *CNRL v Bennett and Bennett Holdings* hearings at the SRB, Court of King's Bench and Court of Appeal levels. I represented clients in the *Lynx v Fulton* SRB hearings who won at the ABKB level in a judicial review which restricted Operator rights to request a review of compensation levels and the Lexin v Bateman hearings which culminated in the *Bateman v Alberta (Surface Rights Board)*, **2023 ABKB 640** judicial review ruling which severely chastised the Chair of the LPRT for improperly reducing landowner compensation awards. I won the *Tams Farm v Lynx* LPRT decision which significantly increased landowner compensation versus Lynx's request for a reduction supported by 'expert' calculations and submitted my own expert report when Lynx appealed to the ABKB which resulted in Lynx withdrawing the appeal.

I also intervened at the "**Redwater case**" – *Orphan Well Association v Grant Thorton Ltd*., **2019 SCC 5** hearing by retaining the University of Calgary's Public Interest Law Clinic lawyers to represent some landowner groups, and then spent time explaining the surface rights law in Alberta to them and helped draft the submission that was made to the Supreme Court of Canada. The subsequent ruling quoted some of our material and ended up entrenching the 'Polluter Pay principle' in the oil/gas bankruptcy hearings that have plagued Alberta and now allows the AER to take pre-emptive action to 'confiscate' assets to satisfy reclamation obligations.

I participated in some of the first Section 36 decisions at the SRB/LPRT that entrenched landowner's eligibility for costs against insolvent Operators which now results in the Provincial Treasurer paying those costs. I have participated in discussions that have resolved AER/SRB cross-jurisdictional deficiencies regarding land access. I participated in the 1st SRB hearing that was governed by disclosure rules and also participated in the 1st SRB mediation between a landowner and Operator. I have been recommended by some SRB Board members to represent their own neighbours and have been recommended by a current senior Alberta Minister to represent his neighbours.

I have also represented landowners at the AER and the NEB/CER with current files regarding noise complaints under CER/AER noise rules and pipeline trespass issues regarding damage compensation.

I am also participating in the current Alberta government Mature Asset Strategy groups where I have been asked to make recommendations concerning AUC, AER and LPRT policy and legislative changes to allow mature oil/gas assets to be repurposed from oil/gas energy production and to help resolve the regulatory roadblocks that currently exist.

I've been up against more than 100 lawyers in various regulatory/compensation hearings and won the vast majority of them. My knowledge and more than 15 years of experience derived from the cases outlined above exceeds most of the lawyers appearing before this Commission.

The Commission's claims that I cannot provide certain forms of legal advice, interpret legislation and provide legal opinion are unfounded, unwarranted and incorrect and are disproven by the fact that various tribunals and courts have allowed me to do so for some time, and in fact various Alberta government ministries have also asked me to do so for some time.

b) The nature of 'experts'

Regulatory tribunals are generally considered to have some expertise regarding the subject matter that they have jurisdiction over. The Commission relies upon 'experts' to a much greater extent that the LPRT does, and likely even more than the courts do. In my opinion, the Commission relies upon 'experts' too much and does not exercise its mandate to utilize its own expertise in many circumstances.

My first experience with 'experts' was in the *CNRL v Bennett and Bennett Holdings Ltd*.[2] proceeding at the Surface Rights Board which was appealed by CNRL to the Court of King's Bench. In the court ruling[3], the Justice found that the evidence provided by a lay person (myself) was more credible than that provided by CNRL's 'experts'. This was again appealed and in the Court of Appeal ruling[4], the justices ruled that a lay person's evidence can be held more credible if it is 'correct'.

I have likely participated in more than 100 hearings before the SRB/LPRT over the last 15 years. The LPRT generally does not give much credence to 'experts' because the landowner usually presents more accurate information regarding his farming practises and the 'expert' relies upon speculation and provincial average data that does not reflect the particulars of the specific farming operation. Upon appeal, a number of court decisions have not been kind to the information, and opinions, provided by 'experts'.

I generally do not retain experts when I represent intervener groups before the Commission for a number of reasons:

1) Industry can afford better experts as the AUC *scale of costs* is prohibitive. It is difficult to retain experts and to pay them if the AUC does not award full costs.
2) The Commission often disregards the evidence presented by intervener experts.

[2] CNRL v Bennett and Bennett Holdings Ltd. 2006 ABSRB 9

[3] CNRL v Bennett and Bennett Holdings Ltd. 2008 ABKB 19

[4] CNRL v Bennett and Bennett Holdings Ltd. 2010 ABCA 91

3) Applicants are afforded the opportunity of 'reply evidence' where they can parachute additional experts in, with the intervener not being given the opportunity to reply.
4) Experts are supposed to be non-partisan and unbiased, so if Industry is bringing the best experts, its simply more effective to question them.
5) The Commission has a mandate to approve the applications brought before it unless significant concerns arise.
6) Even if Intervener experts raise substantive concerns, those concerns will likely be overruled in the Public Interest.

The Commission has stated that Intervener groups cannot raise issues like property devaluation, noise, health concerns and certain other matters without providing expert evidence. However, the Commission generally dismisses Intervener expert evidence on these topics anyways by exercising its Public Interest mandate, so it is generally ineffective to raise the issues in the first place.

Another concern is whom the Commission considers to be an expert. The Commission does not qualify experts anymore and many 'established experts' have little advanced formal education and come with a few credits from colleges in the fields of property appraisal and agronomics. This comes with the risk that 'expertise' might suffer from the garbage-in, garbage-out scenario when the 'expertise' is not allowed to be properly challenged.

The Commission tends to be somewhat restrictive in how it handles cross-examination which generally is allowed great leeway at various tribunals and before the courts. For not being a lawyer, nor an expert, it is interesting that I have been able to identify numerous errors in expert submissions, including a concession that the '30 hour German guideline' on shadow flicker hours has likely been incorrectly accepted by the Commission for years and that wake turbulence experts were using an incorrect formula. Based upon the experience that I have outlined in this submission; I can often recognize when the 'experts' are wrong and ask the questions that make them acknowledge it.

Interveners should have the ability to raise the issues that they are concerned about without being restricted by whether they can find an expert willing to provide evidence for them. Interveners should be able to present evidence regarding weeds, soil erosion, aerial spraying, agronomics on their own lands without having to rely upon experts. If Commission deliberations are conducted by a panel with some subject matter expertise, they should be capable of determining the weight to give various forms of evidence instead of just dismissing the matter out of hand.

In general, it appears that the Commission's 'Public Interest' mandate nullifies most of the expertise available to landowners and that procedural rules provide applicant's the final word on the matter with reply evidence. In many cases is seems that attempting to provide 'expert evidence' on behalf of interveners is a waste of time.

c) My Recent AUC cases

I have represented a number of Intervener groups before the AUC over a number of years and recently, the Commission has been more critical of a non-lawyer representing an intervener group. The Commission does not operate within a vacuum and my clients hire me to try to stop applications, or to at least obtain commitments and license conditions that will limit the adverse effects that occur. The AUC license is just one of the steps within the process and it appears that the Commission is not always aware of the 'big picture' or the subsequent process that occurs before the LPRT when the applicant attempts to exercise the 'rights' that it has been given by the Commission.

I do not merely attempt to obtain representation fees, I try to stop the projects that negatively affect my clients and sometimes this involves setting up the Commission process to obtain a ruling that can subsequently be used to block the project, or to force the applicant to limit the adverse effects imposed upon my clients.

For instance, in the Central East Transfer-out Transmission Development Project Decision 25469-D01-2021 I was able to obtain a number of commitments from the applicant and conditions from the Commission that lessened the adverse effects of a

transmission line on my client's lands, in fact, on all of the lands involved, even if they weren't my clients.

In the Buffalo Plains Wind Farm Decision 26214-D01-2022 I was able to obtain, what is widely regarded within the Industry, as the most commitments and conditions that had been imposed upon a wind farm in Alberta. In the subsequent Buffalo Plains Wind Farm Amendment Proceeding 28017, the applicant addressed my clients concerns so that we could withdraw from the proceeding without relying upon the Commission to intervene.

In the Winnifred wind power connection project Proceeding 26707, I was able to identify a better powerline routing (without using experts) which resulted in the routing being changed, and a hearing not being necessary. In that situation, some of my clients had previously retained a lawyer for representation, but she admitted that she knew nothing of the AUC process and she requested that I take over representing those landowners.

The AUC process often forces applicants to address intervener concerns without Commission input, and frankly, that is what most wind and solar project applicants wish as the Commission is often inconsistent in its rulings.

The Halkirk 2 wind project amendment (Proceeding 27691) and Forty Mile wind project amendment (Proceeding 27561) that I represented interveners on, both involved situations where the interveners had participated in previous AUC proceedings and didn't want a lawyer representing them in these new proceedings. The current Willow Ridge wind project (Proceeding 27837) is the same situation.

I have a different approach than how most lawyers handle these files. I present the issues that my clients want addressed (within reason and within the rules) instead of dictating to them how we will proceed. I listen to them instead of just telling them what to do. I also do not bill them for many of the phone calls and emails involved and I travel to the project sites and meet with them, often, to understand their concerns, and this often involves substantial travel time and mileage that is not

billable according to the AUC rules. Most lawyers won't do that. The Commission seems to think that my clients need to be protected from me, but have any of them registered a complaint?

In two recent Proceedings, the Commission has been critical of me but those Panels don't seem to understand the issues at play. As mentioned, Commission decisions are often the first step as the applicants then have to apply to the LPRT to obtain right-of-entry (ROE) orders to gain access to the lands if landowners object. I was involved in the *Mueller v MATL* **2011 ABKB 738** judicial review which outlined the futility of challenging AUC/AER licenses at the LPRT. However, after arguing and discussing, the matter with a number of intervener lawyers, it appears that the LPRT does not have jurisdiction to grant ROE orders for wind and solar project collection lines. If this is a correct interpretation, solar projects and especially wind projects will have difficulty being constructed as their collection power lines cross road allowances and many pipeline ROWs. The Prominence Solar project (Proceeding 27769) provided the opportunity to test this theory, however it was not the AUC ruling that would determine things, it is what would happen after the applicant tried to exercise their license, where precedence would be set.

In the Prominence solar project proceeding the applicant was proposing that their underground collector lines and traffic routes cross my client's underground irrigation water line and both the landowner owning the water line and St. Mary's Irrigation District were refusing a crossing agreement. The Commission stated in Prominence Solar Project **Decision 27779-D01-2024**, at:

> *44. The Commission, as a public body with a public interest mandate, considers the easement issue to be a private contractual matter.**22 The Commission does not have the authority to compel the SMRID or D. Baczuk to grant an easement crossing agreement**. However, where the parties are unable to negotiate and agree on crossing terms, or have disputes regarding easements rights, they can pursue other legal avenues, outside the Commission, for determination and resolution of these issues. The unresolved easement issue in this case does not prevent the Commission from approving the project based on broader public interest considerations and the applicant takes the risk that it will be unsuccessful in obtaining a crossing agreement through negotiation or*

legal proceedings. In that case, the applicant will be unable to proceed with the project as applied for and as approved by the Commission.

That paragraph was the main reason for my clients participating within the proceeding. As mentioned, I had debated the issue with lawyers that I associate with in representing interveners before the Commission and we recognized that the Commission did not have land access jurisdiction but my clients needed a ruling that could be used at the LPRT if the applicant tried to apply for a ROE order and I also wished to challenge the applicant's ability to gain land access before the courts.

SMRID has initiated legal action to deny the applicant land access and there are other reasons why this project will likely not go forward. If the court denies land access, then I will apply to the Commission to revoke the solar project license as paragraph 44 (above) suggests. So contrary, to the Commission panels findings above, my actions (which the Panel criticized) set the stage for my clients to likely be able to block the solar project notwithstanding the Commission's approval. That is what I was retained to do.

In the Proteus Alberta Solar Projects **Decision 28325-D01-2024**, I was requested by the MD of Taber to obtain clarity from the Commission regarding municipal authority regarding renewable energy projects. Contrary to the Commission's claims that I was inexperienced, cannot provide legal advice or make legal argument or interpret the statutes governing applications before the Commission, I was aware of the law and the MD simply wanted written clarification that could be used before the LPRT if the applicant refused to abide by municipal development permit requirements. By the way, that applicant has now become much more cooperative with the MD's desires.

I have presented, regarding renewable energy projects, to a number of municipalities in Alberta and the prevailing opinion is that there is no point for the municipality to show up before the Commission as its concerns will be ignored and 'trumped' by Clause 619 of the *Municipal Government Act* (MGA). This is further reinforced by the type of decision that the Commission issued, at the same time that the MD was intervening on the Proteus Solar project, in the Three Hills Solar Project 28086-D01-

2024 wherein the Commission overruled Kneehill County's concerns regarding weeds, soil erosion and other matters and effectively exercised Clause 619 to take away much of the County's ability to exercise its own jurisdiction. As a result, the County wrote to the Premier of Alberta to object to this type of treatment. However, the Commission stated the following in the Proteus decision:

> *59. In the Commission's view, based on the interpretation of Section 619, as set out by the Court of Appeal of Alberta, the MD's characterization of Section 619 is too broad in its approach. As noted previously by the Commission,* ***sections 619 and 620 are only engaged "when it is necessary to resolve conflicts between Commission decisions and municipal planning instruments."35*** *If there is no conflict, both can effectively govern the planning and development process.*
>
> *60.* ***The Commission recognizes municipalities are subject-matter experts on land use in their own jurisdiction and, as such, it is helpful for the Commission when municipalities appear in the Commission's proceedings.36*** *However, the Commission's decision does not serve to replace the MD's authority or prevent the MD from evaluating the project in accordance with its municipal requirements. The only caveat to this is that the MD may not make findings or render a decision which frustrates what the Commission has already determined.*
>
> *61.* ***Given their expertise, municipalities may be better placed to address certain elements of the project in the development process such as weeds and soil erosion. Taking the example of weeds, the Commission does not agree that by considering weeds in its permitting process, a municipality cannot also review this subject****. Instead, the Commission's view is that it has its own criteria and requirements for addressing weeds, which are developed for province-wide application, while municipalities may have further criteria to address local concerns. In line with this, the Commission would not decline this project because it does not meet the information requirements of the applicable municipal government.* ***Applicants must still meet municipal requirements, including development permits. Further, municipalities can enforce their own requirements at that point, so long as they do not frustrate the Commission's approval****.*

These three paragraphs have been noted by a number of municipalities. These paragraphs can also be used before the LPRT if applicants refuse to acknowledge and follow municipal development permits requirements. These paragraphs were also the main reason why the MD of Taber participated in the Proceeding. I am not aware of the Commission outlining its reasoning to this extent in any other

proceeding, nor stating its understanding of municipal jurisdiction, to this degree. Despite the fact that many municipalities did not previously intervene before the AUC because of lack of standing and cost recovery, I'm not aware of any lawyers achieving these acknowledgements from the Commission on any other renewable energy project application. I was aware that the Commission would likely critique my approach, but my client wanted me to push the issue and also guaranteed my costs and I obtained what they wanted.

d) Agents presenting evidence

The Commission has also criticized me for presenting my own evidence. It doesn't appear that there is a rule that states that I cannot present evidence or cannot be cross-examined. In fact, I've discussed the issue with Rob Watson at the AUC and he acknowledged, that while being unusual, it wasn't necessarily against the rules.

The SRB/LPRT has dealt with this issue a number of times. The lawyer 'code of ethics' and rules prevent lawyers from presenting their own evidence and testifying and being cross-examined. But it doesn't prevent agents or representatives from doing so. When I first started representing landowner at the SRB, I often presented much of the evidence, was put under oath and cross-examined. It is still allowed by the LPRT and some occasions arise where it is necessary, but for the most part I try to avoid doing so. One of the advantages of a non-lawyer at the LPRT is that lawyers cannot give evidence while agents can.

The AUC generally has a stricter hearing process but again, it doesn't appear to be against the rules.

Two of the decisions where the Commission has criticized me for providing evidence involved written submission hearings which are occasions where the Commission, interestingly, is not required to afford either side the opportunity of being represented by a lawyer.[5] In the Halkirk 2 (3 Turbine) Proceeding the Panel was investigating the safety issue of constructing 3 wind turbines within 4000 meters of

[5] Alberta Utilities Commission Act, section 9(4) and Administrative Procedures and Jurisdiction Act section 6.

an aerodrome and the applicant had an 'expert', who they admitted wasn't an expert, providing evidence on wake turbulence. On behalf of my client, we submitted some scientific articles that refuted the 'expert' and the applicant admitted that the articles were correct but would only make a marginal difference on the 'experts' conclusions. The Commission stated that we didn't have the right to submit technical material without an expert even though the applicant acknowledged the material.

Other provincial tribunals would allow such articles and there doesn't appear to be any rule that disallows this. Commission panels should have some subject matter expertise and in general, the abstracts and conclusions from scientific articles are simplified without getting into the more complicated details of how the results were derived, and Commission panels should be able to understand them. It is unfortunate that the Commission does not allow a more robust examination of the issues involved instead of defaulting to an 'its too complicated' approach. If experts were to go into the details, is the Commission panel capable of understanding the material if they can't understand scientific article conclusions?

The other decision was the Proteus solar project Proceeding 28325 decision and the criticism was unfounded as the MD of Taber clearly identified its councillors as the source of the photo evidence that was submitted and did so in a specific Information Response to Proteus. They were not my photos.

4) Considering Costs earlier

I rarely ask for advance costs, but then I tend to try to avoid using experts. My only concern regarding this issue is the potential 'claw back' of cost awards in the final cost decision which could make cost recovery from an expert challenging.

5) Increasing Rates for Intervener honoraria

Moving from $50 per half day to $100 per day does not accomplish much. Most interveners show up for a whole day in any case so there really isn't any increase.

Considering the fact that the interveners are the only ones in the Proceeding that will likely suffer losses that are not compensated for, one would think they warrant more fair treatment.

Generally, the LPRT has been awarding landowners $50/hr and are looking at increasing that to $100/hr which is much more reasonable for the time involved. Many of the interveners run their own businesses, or are professionals, and paying them a pittance for showing up at Commission hearings forces them to subsidize the applicant's application in addition to the adverse effects and negative impacts that are likely being imposed upon them. In many cases (powerlines) their property ends up being expropriated and expropriation principles state that the expropriated party should be made whole. $100 per day does not do so.

A rate of $100/hr is much more appropriate.

Conclusion

The Commission has stated that non-lawyers cannot give legal advice, cannot interpret legislation and cannot have a legal opinion. This is incorrect and violates established legislation and jurisprudence. It has also mentioned other concerns that frankly are the Interveners prerogative and not within the Commission's jurisdiction. Interveners should have the freedom to choose who represents them and expropriation principles require that they are made whole by having representation costs awarded to them.

The current cost award process already provides the Commission with a mechanism to address matters if concerns arise.

I don't act like a lawyer because I'm not one, but I don't get paid like one either. Being an agent comes with advantages and disadvantages. I suggest that the Commission's handling of my recent cost claims has been unfair. As outlined above,

the Commission is penalizing me unfairly and attempting to limit my ability to properly represent my clients. If the Commission is going to criticize me for not being a lawyer and subsequently reduce my cost claims, then reduce it from the lawyer rate, not the consultant rate.

The Commission should not amend Rule 009 to prevent non-lawyers from applying for representation costs. I am more than qualified to represent landowners before the AUC and am allowed to interpret legislation, provide some forms of legal advice and submit legal opinion on behalf of my clients in other forums. If the AUC were to attempt to prohibit it, it would be incorrect, procedurally unfair, discriminatory and likely unlawful.

Respectfully,

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