

CELF 2025 – Recent Judicial Decisions of Interest for Energy Lawyers

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Agenda

1. Duty to Consult
2. Climate Change and Environmental Law
3. Arbitration
4. Royalties
5. Assignments
6. Tax
7. Intellectual Property and Technology

Duty to Consult

***Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025**

FC 319

- **Background:**
 - Judicial review of the Canadian Nuclear Safety Commission's (the **Commission**) decision allowing Canadian Nuclear Laboratories to amend its license to develop a near surface disposal facility on Kebaowek's traditional territory

Duty to Consult

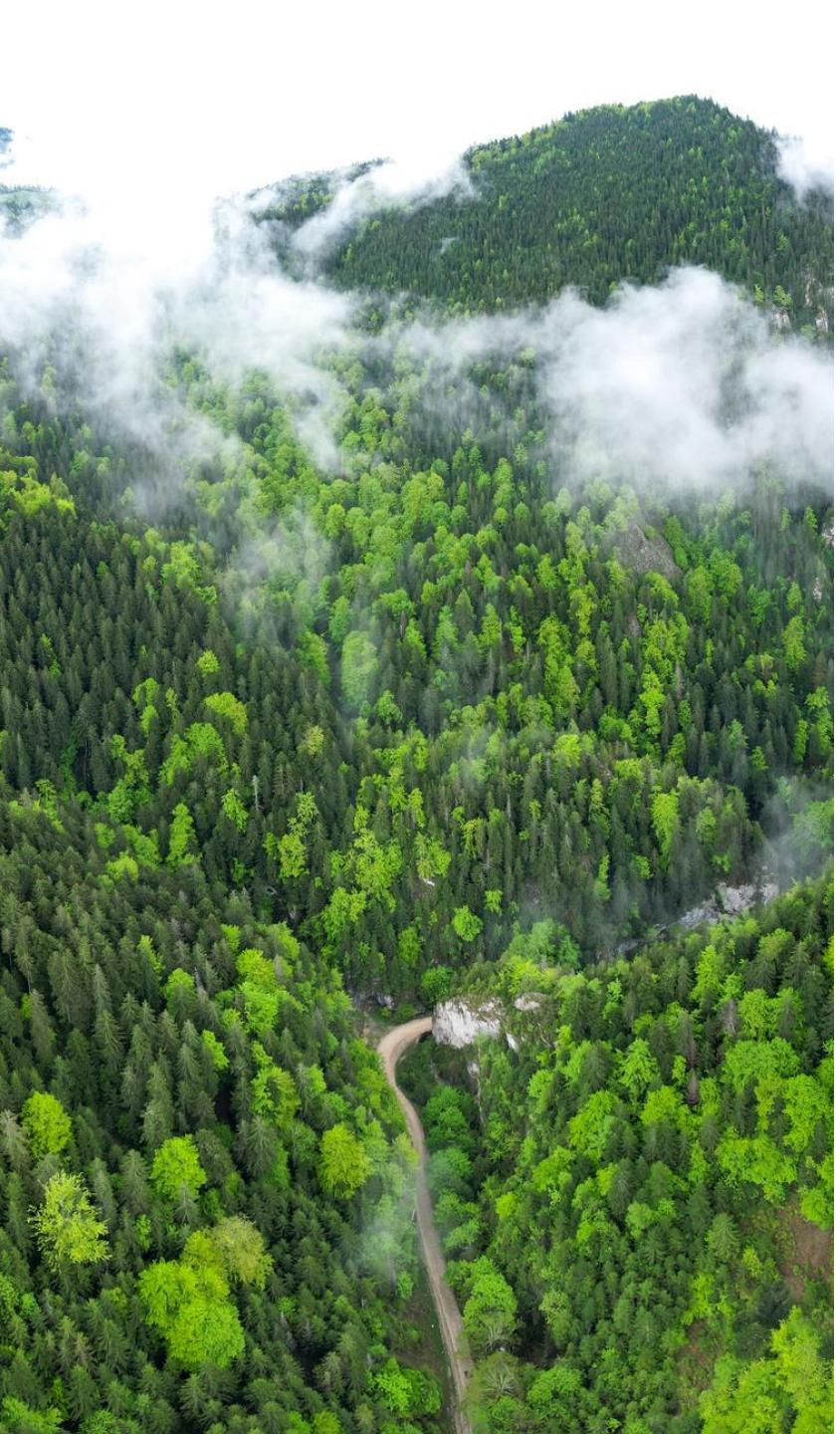
Kebaowek First Nation v Canadian Nuclear Laboratories, 2025 FC 319

- **Decision:**
 - Commission incorrectly found it did not have the jurisdiction to determine if the UNDRIP or the *UNDA* applied to the duty to consult
 - Commission erred in failing to consider UNDRIP and *UNDA* in determining whether it had discharged its duty to consult and accommodate

Duty to Consult

Kebaowek First Nation v Canadian Nuclear Laboratories, 2025 FC 319

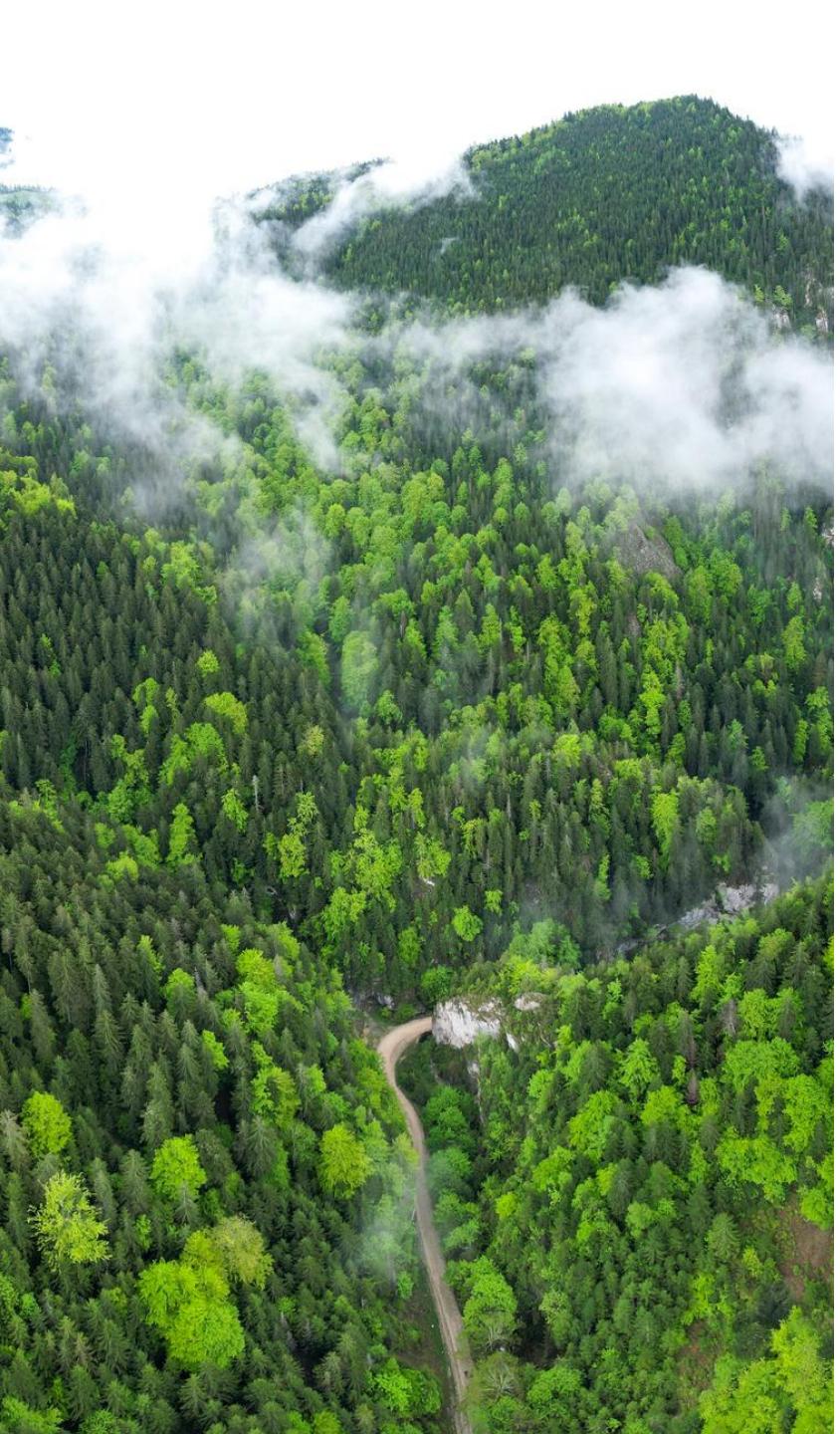
- **Key Takeaways:**
 - UNDRIP and *UNDA* may impose a heightened standard for deeper consultation and accommodation
 - *Haida* standard may no longer be sufficient
 - Decision may introduce further uncertainty around the duty to consult



Climate Change and Environmental Law

Mathur v Ontario, 2024 ONCA 762

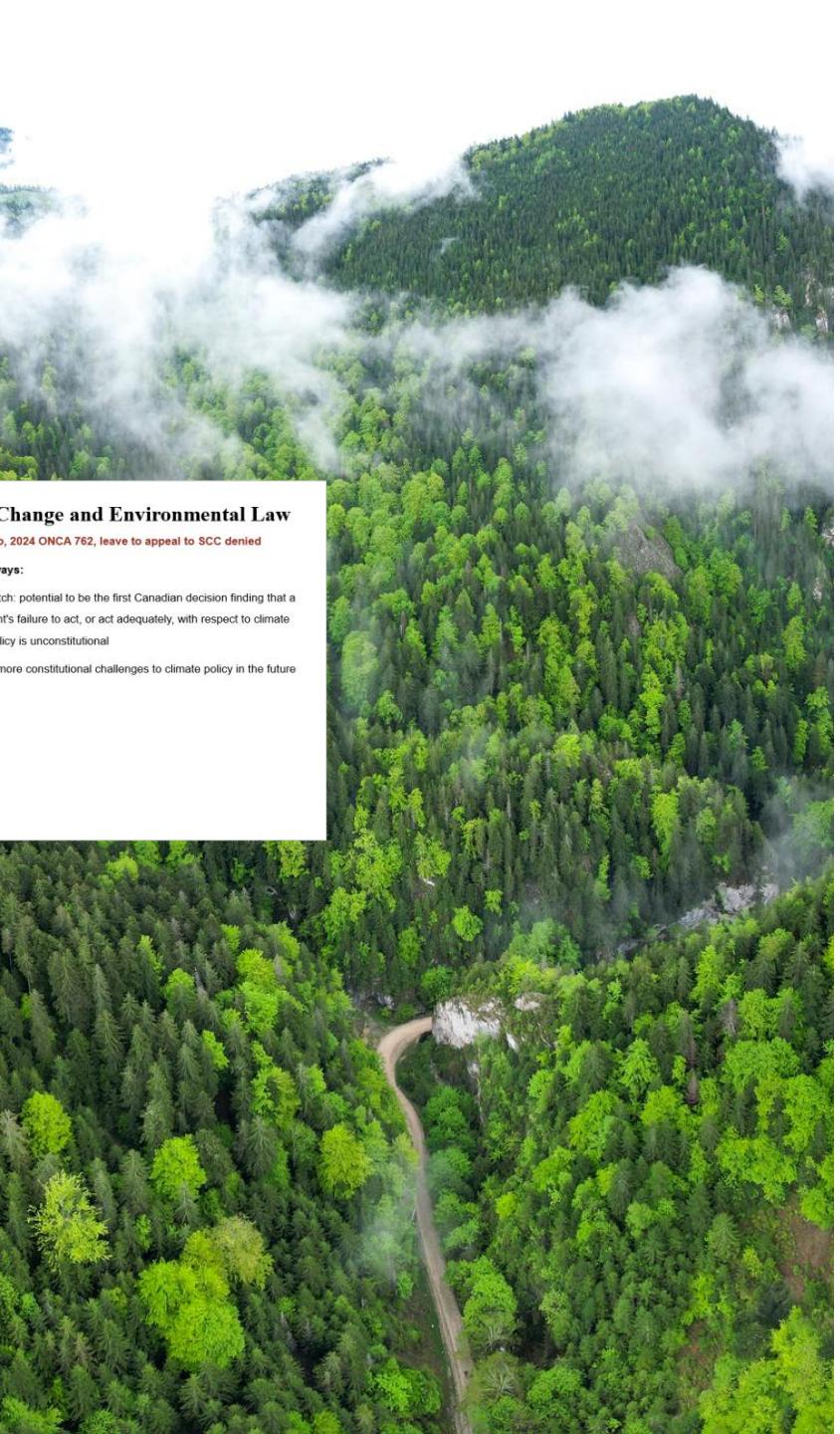
- **Background:**
 - Seven youths argued that Ontario's failure to comply with voluntarily imposed statutory obligations addressing climate change amounted to a breach of ss 7 and 15 *Charter* rights
 - Youths sought an order declaring *Cap and Trade Cancellation Act, 2018* (the **CTCA**) unconstitutional and requiring Ontario to revise its climate change plan
- **Lower Court:**
 - Dismissed the youths' claim
 - Held that *Charter* did not impose a positive obligation on the government to take specific actions to combat climate change



Climate Change and Environmental Law

Mathur v Ontario, 2024 ONCA 762, leave to appeal to SCC denied

- **Decision:**
 - This is not a positive rights claim
 - In voluntarily assuming a statutory obligation to combat climate change, Ontario needed to provide a legislative mechanism to ensure that plans and targets complied with the *Charter*
 - Courts can grant declaratory relief without violating the division of powers



Climate Change and Environmental Law

Mathur v Ontario, 2024 ONCA 762, leave to appeal to SCC denied

- **Key Takeaways:**
 - One to watch: potential to be the first Canadian decision finding that a government's failure to act, or act adequately, with respect to climate change policy is unconstitutional
 - Suggests more constitutional challenges to climate policy in the future

Arbitration

Aroma Franchise Company Inc, v Aroma Espresso Bar Canada Inc,

2024 ONCA 839

- **Background:**
 - Parties involved in a lengthy arbitration
 - Arbitrator accepted an appointment by Aroma Espresso Bar Canada (**Aroma Espresso**) to serve in an unrelated arbitration
 - Arbitrator failed to disclose appointment to Aroma Franchise Company Inc (**Aroma Franchise**)
 - Aroma Franchise applied to set aside the arbitral award based on a reasonable apprehension of bias

Arbitration

Aroma Franchise Company Inc, v Aroma Espresso Bar Canada

Inc, 2024 ONCA 839

- **Decision:**
 - Overturned lower court decision
 - Application Judge failed to apply objective test for reasonable apprehension of bias
 - Arbitrator did not need to disclose the appointment

Arbitration

Aroma Franchise Company Inc, v Aroma Espresso Bar Canada

Inc, 2024 ONCA 839

- **Key Takeaways:**
 - Clarifies tests for reasonable apprehension of bias and duty to disclose a conflict of interest
 - Regardless, parties should be cautious to limit their interactions with arbitrators



Royalties

MEG Energy Corp v Alberta (Minister Of Energy), 2024 ABKB 592

- **Background:**
 - Judicial review of the Director/Minister's decision disallowing handling charges



Royalties

MEG Energy Corp v Alberta (Minister Of Energy), 2024 ABKB 592

- **Decision:**
 - Remitted back to the Minister
 - MEG was entitled to a low standard of procedural fairness from the Director: *ex parte* discussions with the auditors at Alberta Energy was acceptable
 - The Director unreasonably failed to consider the governing regulation



Royalties

MEG Energy Corp v Alberta (Minister Of Energy), 2024 ABKB 592

- **Key Takeaways:**
 - Only a low level of procedural fairness is owed on an objection to the Director
 - Another ABKB decision casts doubt on this
 - *MEG* will be heard by the Court of Appeal
 - New Alberta Energy Proceedings Management Branch

Assignments

Canadian Natural Resources Limited v Harvest Operations Corp, 2024 ABCA 3, leave to appeal to SCC denied

- **Background:**
 - Harvest assigned its interest in 170 agreements with Canadian Natural to Spoke Resources
 - Canadian Natural argued that Harvest's assignments were of no force and effect



Assignments

Canadian Natural Resources Limited v Harvest Operations Corp, 2024 ABCA 3, leave to appeal to SCC denied

- **Decision:**
 - ABKB: granted Harvest summary judgment for 114 agreements that were consent exempt under the CAPL Operating Procedures (land disposed in each agreement was less than 5% of the total despite being 26% cumulative)
 - ABCA reversed: the issue of all assignments must go to trial together
 - Sale was a single "white map" transaction



Assignments

Canadian Natural Resources Limited v Harvest Operations Corp, 2024 ABCA 3, leave to appeal to SCC denied

- **Key Takeaways:**

- The validity of contracts requiring explicit consent prior to assignment can impact how other agreements are interpreted
- The standard of correctness will be applied to standard form clauses (not just contracts)





Tax

Glencore Canada Corp v Canada, 2024 FCA 3, leave to appeal to SCC denied

- **Background:**
 - Diamond Fields backed out of a deal requiring it to pay break fees to Glencore
 - Issue: Were the fees a capital gain (50% taxable) or income (100% taxable)



Tax

Glencore Canada Corp v Canada, 2024 FCA 3, leave to appeal to SCC denied

- **Decision:**
 - Federal Court of Appeal:
 - The fees were not s 9 business income (not from ordinary business operations) or capital gains (no disposition of property – Glencore had no right to merge with Diamond Fields as the offer was to its shareholders)
 - Rather, the fees were s 12(1)(x) income earned as an inducement from business or property

A photograph showing the silhouette of a person's head and shoulders against a bright sky. In the background, a tall power transmission tower with multiple cross-arms and wires is silhouetted against a sunset or sunrise. The sky is a gradient from blue at the top to orange and yellow at the horizon.

Tax

Glencore Canada Corp v Canada, 2024 FCA 3, leave to appeal to SCC denied

- **Key Takeaways:**
 - Break and commitment fees should be structured as damages for lost proprietary rights rather than an inducement to avoid being classified as income

A photograph of several high-voltage power pylons standing in a field. The sky is a vibrant orange and red, suggesting a sunset or sunrise. The pylons are dark silhouettes against the bright sky, with their complex lattice structures and multiple wires clearly visible.

Intellectual Property & Technology



Forum selection clauses

JL Energy Transportation v Alliance Pipeline Limited Partnership, 2025 ABCA 26

- **Background:**
 - Licensing of technology in the energy industry
 - Licensor sued licensee for breach of license and patent infringement
 - Licensee successful in application to summarily dismiss licensor's claim as time-barred under Alberta's *Limitations Act* (2 years limitation)
 - Parties had attorned to the jurisdiction of Alberta and application of Alberta laws



Forum selection clauses

JL Energy Transportation v Alliance Pipeline Limited Partnership, 2025 ABCA 26

- **Decision:**

- Court of Appeal reversed: limitation for patent infringement claim is 6 years per *Patent Act*
- Should licensor have restricted claim to patent infringement from the outset
- Would it have made more sense to bring patent infringement claim in Federal Court
 - Concurrent jurisdiction of Provincial and Federal Court over patent infringement
 - Federal Court has judicial expertise, Canada-wide remedies, extra-provincial enforcement of judgments, but no jurisdiction over pure breach of license claim
 - Under *Patent Act*, provincial court jurisdiction if it is "the province in which the [patent] infringement is said to have occurred"



Forum selection clauses

JL Energy Transportation v Alliance Pipeline Limited Partnership, 2025 ABCA 26

- **Key Takeaways:**
 - Restrict attornment clauses in technology licenses to license disputes, ensuring that patent infringement claims are left to be governed by statute

A large, dark silhouette of an oil rig structure is set against a vibrant orange and yellow sunset sky. The rig's arms and derrick are clearly defined against the bright background. In the distance, other industrial structures are visible.

Ownership/Inventorship disputes

Mud Engineering Inc v Secure Energy Services Inc, 2024 FCA 131

- **Background:**

- Listed owner brought a patent infringement claim against a company (his former employer) who had a similar drilling fluid (that he alleged to have developed)
- Patent was for drilling fluid compositions for bitumen recovery
- Defendant company, former employer of the plaintiff, challenged the former employee's ownership

A large, dark silhouette of an oil rig structure is set against a vibrant orange and yellow sunset sky. The rig's legs, derrick, and various mechanical components are visible as dark shapes against the bright background. In the distance, other industrial structures like storage tanks are faintly visible.

Ownership/Inventorship disputes

Mud Engineering Inc v Secure Energy Services Inc, 2024 FCA 131

- **Decision:**

- The result on the facts turned on lack of evidence of ownership (of either party)
 - Claim dismissed because the listed owner was not proven to be the owner
 - But, at the same time, no one else was held to be the owner

A large, dark silhouette of an oil rig structure is set against a vibrant orange and yellow sunset sky. The rig's arms and legs are clearly defined against the bright background. In the distance, other industrial structures are visible.

Ownership/Inventorship disputes

Mud Engineering Inc v Secure Energy Services Inc, 2024 FCA 131

- **Key Takeaways:**

- Importance of robust record-keeping of inventions and clear ownership assignment clauses
- Danger of relying on "weak" statutory presumptions
- Danger of relying in ambiguous assignment clauses
 - "Any IP developed by the Employee, in the course of the discharge of the Employee's employment duties, is the property of the Corporation."
 - This was not clear enough in the Court's view

A photograph showing the silhouette of a person from behind, standing in a field. In the background, there are several tall power transmission towers with multiple cross-arms and wires. The sky is a clear blue at the top, transitioning into a warm orange and yellow glow near the horizon, suggesting a sunset or sunrise. The person appears to be looking towards the horizon.

Statutory Interpretation

Telus Communications Inc v Federation Of Canadian Municipalities, 2025 SCC 15

- **Background:**
 - How statutory interpretation applies when adapting existing legislation to new technology
 - Appeal from Canadian telecommunications carriers seeking to have 5G small cells classified as "transmission lines"
 - Would allow carriers to apply to CRTC for terms of access to install 5G antennas without municipal consent



Statutory Interpretation

Telus Communications Inc v Federation Of Canadian Municipalities, 2025 SCC 15

- **Decision:**

- Majority: modern approach to statutory interpretation does not allow the Court to rewrite legislation to accommodate new technology
 - It is up to Parliament to make legislative changes to address technological evolution
- Dissent: took a broader view of the role of the Court in adapting old legislation to new circumstances/technology based on "technological neutrality"



Statutory Interpretation

Telus Communications Inc v Federation Of Canadian Municipalities, 2025 SCC 15

- **Key Takeaways:**
 - Courts are hesitant to overstep their jurisdiction and will not use modern statutory interpretation to liberally read new concepts into old legislation

A scenic landscape featuring a river flowing through a dense forest of green and yellow trees. A large, solid blue rectangular overlay covers the central portion of the image, containing the text "QUESTIONS?".

QUESTIONS?