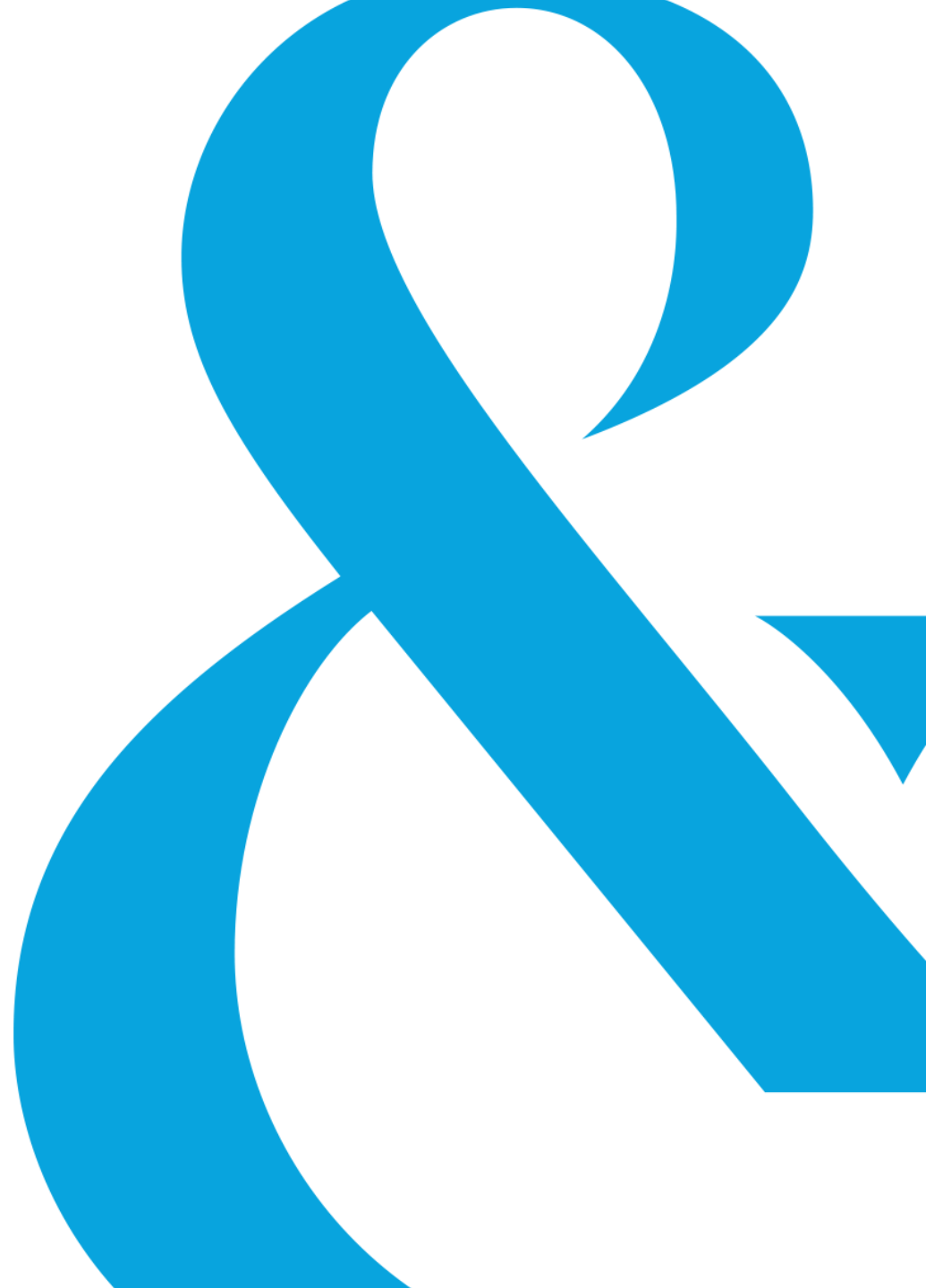


CELF 2025 – Recent Judicial Decisions of Interest for Energy Lawyers

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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

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)



A vertical photograph on the left side of the slide. It shows the silhouette of a person standing in the foreground, looking towards a series of high-voltage power lines that stretch into the distance. The scene is set at sunset or sunrise, with a warm orange glow on the horizon and a clear blue sky above. The power lines and their towers are silhouetted against the bright light.

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)

A vertical image on the left side of the slide. It shows a silhouette of a person standing in the foreground, looking towards a series of high-voltage power lines that stretch into the distance. The scene is set against a bright sunset or sunrise, with the sun low on the horizon, creating a warm orange glow. The sky transitions from a deep blue at the top to a lighter blue near the horizon.

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



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



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



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



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



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



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

An aerial photograph of a lush forest landscape. In the upper center, a calm lake is surrounded by dense green trees. In the lower half, a river flows through the forest, its water appearing dark blue and turbulent as it passes over rocks. The forest is a mix of evergreen and deciduous trees, with some trees showing bright yellow-green foliage. A small, light-colored building is visible on the right side of the image, nestled among the trees.

QUESTIONS?