

Court orders Alberta's Minister of Energy to return \$20 million in unlawfully collected royalties

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On February 1, 2023, BLG (lead by [Karen Salmon](#), [Laura Poppel](#), and [Taylor Kemp](#)), on behalf of Nova Chemicals Corporation (Nova), was successful in quashing decisions of the Alberta Minister of Energy (Alberta Energy) that resulted in Alberta Energy unlawfully collecting over \$20 million in royalties charged on gas processed at the Harmattan Gas Plant. The Harmattan Gas Plant is unique in that it processes both royalty-exempt co-stream gas, and royalty-payable raw gas. The dispute centered on whether the operator of the Harmattan Plant was over-allocating fuel gas used for processing to the co-stream gas volumes when it reported those volumes to a royalty-exempt Petrinex code. The operator used a fuel gas allocation procedure to accurately allocate fuel gas between the two streams in accordance with the actual plant operations and based on the equipment each stream actually used for processing. In 2016, Alberta Energy started imposing its own methodology for allocating fuel gas, which allocated the fuel gas pro-rata between the two streams. Alberta Energy then applied caps to the volumes the operator could report to the royalty-exempt code and retroactively charged Nova royalties on any volumes that exceeded the caps. Nova and the operator challenged these decisions.

The Court ultimately quashed the decisions on the basis that they were unreasonable, finding that Alberta Energy “is entitled to collect only those royalties that are lawfully due – no more, no less and, even then, only in accordance with what is permitted under the [*Mines and Minerals Act*]”. In this case, the Court found, among other things, that Alberta Energy’s had no evidentiary basis upon which it could have reasonably concluded that the operator had inaccurately or unfairly allocated fuel gas to the co-stream volumes in a manner that impacted the calculation of royalties owing to the Crown, and that the Crown had exceeded its jurisdiction when it applied its own pro-rata fuel gas allocation methodology. The decision provides a helpful guide on the limits of Alberta Energy’s discretionary powers under the *Mines and Minerals Act*.

- [Consult the decision](#) (*Taylor Processing Inc v Alberta (Minister of Energy)*, 2023 ABKB 64)
- [Consult BLG’s case comment](#) (March 2023)

By

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