

# The Alberta Energy Regulator Retains its Statutory Powers in the Bankruptcy of an Oil and Gas Licensee

January 31, 2019

Today, the Supreme Court of Canada released its decision in Orphan Well Association v. Grant Thornton Ltd., known as Redwater. A majority of the Supreme Court held that the Alberta Energy Regulator's (AER) use of its statutory powers does not create a conflict with the federal [Bankruptcy and Insolvency Act](#) (BIA) as to trigger the constitutional doctrine of federal paramountcy.

The majority held that [Section 14.06\(4\)](#) of the BIA is concerned with the personal liability of Trustees-in-Bankruptcy (Trustee) and does not empower a Trustee to walk away from the environmental liabilities of the estate it is administering. Furthermore, the AER is not asserting any claims provable in the bankruptcy, and the priority scheme in the BIA is not upended. The AER's refusal to approve licence transfers unless and until a licensee's Liability Management Rating obligations have been satisfied does not give the AER a monetary claim against the licensee.

The majority concluded that Alberta's oil and gas regulatory regime can coexist with and apply alongside the BIA.

A full analysis of the Supreme Court of Canada's decision will follow.

Expertise

[Environmental](#), [Commercial Litigation](#), [Commercial Arbitration](#), [Energy - Oil & Gas](#), [Energy – Power](#), [Energy – Power Regulatory](#)

---

## **BLG | Canada's Law Firm**

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### **BLG Offices**

#### **Calgary**

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### **Ottawa**

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### **Vancouver**

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### **Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### **Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.