

In the Court of Appeal of Alberta

Citation: Kelly v. Alberta (Energy Resources Conservation Board), 2011 ABCA 19

Date: 20110124
Docket: 1003-0333-AC
Registry: Edmonton

Between:

Susan Kelly, Linda McGinn and Lillian Duperron

Applicants

- and -

**Alberta Energy Resources Conservation Board
and Grizzly Resources Ltd.**

Respondents

**Reasons for Decision of
The Honourable Mr. Justice Jean Côté**

Application for Leave to Appeal

**Reasons for Decision of
The Honourable Mr. Justice Jean Côté**

[1] I give leave to appeal to the Court of Appeal from the decision on costs (2010-007) of the respondent Board dated October 22, 2010. The appeal will be confined to these questions:

1. Is the Board's power to award costs limited to persons who are "local interveners" as defined by s. 28(1) of the *Energy Resources Conservation Act*?
2. Does a formal Directive of the Board have the power to interpret a section of that *Act*, and compel the Board and others to follow that interpretation?
3. What is the proper interpretation of s. 28(1) of that *Act*?
 - (a) Must detriment or potential detriment be to the soil or improvements on the land; or can the detriment include interference with occupation, use or enjoyment of the land by people, plants, animals or chattels (including danger to health)?
 - (b) Are the relevant facts for that subsection tested or fixed at the time that the proceedings began, or during the proceedings, or only at the time of the costs application after the Board's substantive decision?

[2] Costs of the motion for leave were not discussed. Unless any of the three counsel applies to me in writing on that topic within 10 days, those costs will be dealt with by the panel hearing the appeal.

Application heard on January 19, 2011

Reasons filed at Edmonton, Alberta
this 24th day of January, 2011

Côté J.A.

Appearances:

J.J. Klimek
for the Applicants

M.G. LaCasse
for the Respondent Energy Resources Conservation Board

L.A. Goldbach
for the Respondent Grizzly Resources Ltd.