Court of King's Bench of Alberta

Citation: PetroChina Canada Ltd v South Bow Infrastructure (Canada) Ltd, 2026 ABKB 21

Date: 20260107
Docket: 2501 19831
Registry: Calgary

Between:

PetroChina Canada Ltd

Applicant

- and -

South Bow Infrastructure (Canada) Ltd and
South Bow Infrastructure Holdings Ltd Partnership

Respondents

Reasons for Decision
of the
Honourable Justice Douglas R. Mah

Table of Contents

A. What This Case Is About 2

B. Factual Background 3

C. The Arbitration Questions 4

D. Respective Roles of the Court and the Arbitration Tribunal 5

E. Positions of the Parties 6

F. Two Nagging Questions 6

a. What Is Being Enjoined? 6

b. Will Lack of Injunction Result in Loss of Option? 8

G. Application of the *RJR-MacDonald* Test 11

a. Which Threshold – Serious case to be Tried or Strong *Prima facie* Case? 11

b. Is There a Strong *Prima facie* Case? 12

c. Irreparable Harm? 15

d. Balance of Convenience 15

H. Outcome 16

Appendix A 17

A. What This Case Is About

[1] This written version of my decision, beginning with the next paragraph, is a near *verbatim* rendition of the Oral Reasons for Decision delivered by me on December 18, 2025. I have made minor wording changes to improve readability, corrected transcription and spelling errors from the transcript, and I have inserted headings, some contextual footnotes and complete citations. Otherwise, the decision is unchanged. This decision is published for transparency and accountability purposes.

[2] I will refer to the parties as PetroChina, who is the Applicant, and the Respondents collectively as South Bow.

[3] PetroChina applies for an injunction to keep a contractual option period from expiring. The context is that PetroChina seeks to acquire South Bow's interest in a pipeline and become the pipeline's sole owner under an option contained in the agreement. They are parties to two agreements relevant in this application, a Limited Partnership Agreement (LPA) and a Unanimous Shareholder Agreement (USA).

[4] Counsel advised and they agree that the relevant provisions in each both apply and are almost identical, and they are certainly identical in effect. Therefore, I will refer to the wording of "the agreement" in these Reasons, which should be understood to mean that I am referring to both where the context so requires.[1]

B. Factual Background

[5] PetroChina, along with South Bow, each own, I will say, 50 percent interest, by rounding up, and together own 100 percent in the Grand Rapids Pipeline, which is a 460-kilometre twinned pipeline facility connecting the producing areas in and around Fort McMurray with the terminals in the Edmonton area.

[6] The agreement provides PetroChina a limited time option to purchase South Bow's shares in the pipeline enterprise. It was agreed by the parties that the option was triggered on October 1st, 2024. The details of the events giving rise to triggering are fully described in the affidavits, but essentially, consists of a change in South Bow's ultimate parent.

[7] There was an intervening adverse claim to South Bow's shares by a third party or, alternatively, a claim by that third party that its consent to the transaction between PetroChina and South Bow was required. That third party's claims were put to bed about the middle of August 2025.

[8] Ernst & Young (E&Y) was hired as a valuator for the purposes of determining the purchase price for the transaction also in August 2025. E&Y delivered a first draft on October 8th, 2025, and then a final report on October 22nd, 2025. This resulted in the pipeline entity delivering a purchase price notification on October 23rd, 2025, meaning that the 30-day time period for PetroChina to exercise the option began to run on October 24th, 2025.

[9] The proverbial fly-in-the-ointment is the requirement of two governmental authorizations.

[10] First, because of the size and nature of the transaction, dispensation is required under the *Competition Act*, RSC 1985, c C-34. Second, because PetroChina is a Chinese state-owned enterprise, its acquisition of South Bow's interest in the pipeline must undergo a net benefit review under the *Investment Canada Act*, RSC 1985 c 28 (1st Supp). Together, these two requirements are called the "authorizations" in the rest of these reasons.

[11] Both of these authorizations take time to get. PetroChina's position is that it was not commercially feasible to begin the approval process until the concerns of the third party were cleared and the actual purchase price known. Section 9.10(a) of the agreement provides that the option is exercisable in the 30 days after notice of the option arising and the purchase price

[1] So that readers have the exact wording, the relevant provisions of the LPA are reproduced as Appendix A hereto.

provided that, if the authorizations are not complete, the option is exercisable for a further 30 days in order to get the authorizations.

[12] PetroChina and South Bow were in contact with one another throughout October and November 2025 about the proposed transaction, alternatives to the transaction, and the need to obtain the authorizations.

[13] On November 21st, 2025, PetroChina formally served its Notice to Exercise Option on South Bow. In a second letter the same day, it tendered a draft purchase and sale agreement, and in a third letter, asked that it be mutually agreed that the timeline for getting the authorizations be extended from the 30 days to the actual dates of getting the authorizations or that closing be made conditional upon the authorizations being put in place.

[14] South Bow responded on November 24th, 2025, saying that it was not agreeing to any modifications of section 9.10 of the agreement, and that the Notice to Exercise given by PetroChina was non-compliant because the authorizations had not been obtained. South Bow was saying that PetroChina's purported exercise of the option was void as non-conforming. So, the upshot of South Bow's position is that the option expires at the end of the second 30-day period, which is on December 24th, 2025.

[15] Under South Bow's position, PetroChina can only take up the option if it has the two authorizations in hand on or before December 24th, 2025 which, in the circumstances, is impossible. This led PetroChina to engage the dispute resolution process in the agreement.

[16] The first part is negotiation, and the second part is arbitration by a three-person arbitration panel.

[17] South Bow has refused PetroChina's request to waive negotiation and proceed straight to arbitration. PetroChina now seeks injunctive relief from this Court to keep the option period alive while the parties arbitrate which will likely be some months down the road.

[18] So, that is a bare bones recital of the chain of events. There certainly is a lot more detail and nuance involved. I will make reference to additional facts as I progress through these Reasons, but I wanted to set out a basic factual background as context for what follows.

C. The Arbitration Questions

[19] Two questions have been submitted to arbitration. First, PetroChina seeks an arbitral declaration that it validly exercised the option on November 21st, 2025, and that the period of closing the option transaction remains open until PetroChina has either received or has been finally denied the authorizations. In doing so, it relies on the wording of section 9.4(d) which provides that the option to purchase is in accordance with the procedures set forth in section 9.10 *mutatis mutandis*.

[20] Second, and in the alternative, if the agreement cannot be amended, then PetroChina seeks relief from forfeiture in the form of allowing it time to get the authorizations.

[21] Basically, the primary remedy sought is the extension of the 30 days to get the authorizations. That is, the second 30 days should be extended to whatever period is required to either obtain the authorizations or get a final denial of them with PetroChina acting reasonably.

[22] South Bow's position is that sections 9.4(d) and 9.10, read correctly, are not capable of the construction urged by PetroChina. South Bow also says there has been no breach of agreement on which PetroChina can rely to obtain relief from forfeiture. Since, in South Bow's view, PetroChina has not validly exercised the option, it has acquired no rights to which relief applies.

[23] Obviously, the arbitration panel will be asked to interpret the agreement and make a final ruling on whether PetroChina is right in its construction of sections 9.4(d) and 9.10 such that the option, due to the circumstances, continues to live.

D. Respective Roles of the Court and the Arbitration Tribunal

[24] Now, I wanted to speak about the role of the Court versus that of the Arbitration Tribunal.

[25] All disputes arising under the agreement, including interpretive disputes, are to be decided by arbitration under section 14.2 of the agreement. At paragraph (f) of section 14.2, a niche of jurisdiction is reserved for the Court. It says that injunctive relief will not be sought from the arbitration panel, and that the parties may seek injunctive relief from the Court. And that is why PetroChina has brought South Bow before me now.

[26] The niche of jurisdiction may apply to any issue of dispute arising from the agreement, and not just the matter of how the transfer of shares occurs. It is fair to say that the agreement itself governs every aspect of relationship between owners of the pipeline enterprise.

[27] I am cognizant that in all injunction cases in Canada, the Court must apply the Supreme Court of Canada decision in ***RJR-MacDonald Inc v Canada (Attorney General)***, 1994 CanLII 177 (SCC) (***RJR-MacDonald)***, which contains a three-part test, the first of which involves some level of inquiry into the merits of the Applicant's claim. There is controversy here about what type of injunction is actually being sought and therefore, how closely I should be scrutinizing PetroChina's case, and I will get to that later.

[28] I do realize the Court and the Arbitration Tribunal have separate roles. I am asked to give interim interlocutory relief; the Arbitration Tribunal is asked to make full and final pronouncement on the merits and give final relief.

[29] I acknowledge that I am not to interfere with the work of the Arbitration Tribunal. The roles are complementary. The spheres of jurisdiction should not be overlapping, and I certainly should not be making the arbitrators' decision for or in place of them.

[30] I understand that whatever factual findings I might care to make, and any findings regarding the merits of the dispute before the arbitration panel, constitute my views only made on a limited record and no other evidence and after only a half-day of argument. Even the briefs presented were, in part, based on what one side thought the other side would argue. There was not enough time in the compressed litigation timeline to exchange briefs in accordance with the Commercial Practice Note.

[31] I am not trying to make excuses for myself, but rather I am trying to explain why the arbitration panel is entitled to come to a different conclusion than me on the merits of the interpretive dispute. The panel that is to be appointed will no doubt be experienced, qualified, and competent as adjudicators who can easily disabuse themselves of anything I might say. Even

in injunction cases taking place totally in the Courts, injunctions are vacated or varied all the time by a subsequent judge on a different and better record.

[32] All to say that nothing I say today should be considered binding upon, or even influence, the Arbitration Tribunal in its work. The Arbitration Tribunal will make the final and binding decision regarding whether the option has been validly exercised and whether the option period continues until the authorizations are in hand.

E. Positions of the Parties

[33] As I said, the applicable test for deciding injunctions in Canada is found in ***RJR-MacDonald***, which has three parts. First, the strength of the Applicant's case on the merits; second, whether the Applicant will suffer irreparable harm; and third, where the balance of convenience lies.

[34] Here, there is disagreement between the parties as to the threshold that must be met with regard to part one. PetroChina says that the threshold is the general one, applicable to prohibitive injunctions, that is, serious issue to be tried, and that the standard is met here. South Bow, on the other hand, asserts that the injunction is mandatory and therefore attracts the higher standard of strong *prima facie* case. South Bow says that PetroChina meets neither standard.

[35] PetroChina says that if the injunction is not granted, then it will sustain irreparable harm in the form of loss of the option opportunity altogether. South Bow contends that there is no such risk to PetroChina because the Arbitration Tribunal has jurisdiction to grant the very remedy that is sought in this injunction application namely, validation of PetroChina's exercise of the option and extending the period of option.

[36] South Bow says that rather, it will suffer harm because if the injunction is granted, PetroChina can use the extra time to perfect its requirements under section 9.10, close the option, and take over the entirety of the pipeline without an arbitration decision. Thus, both sides say that the balance of convenience favours them.

F. Two Nagging Questions

[37] Now, as I heard this application and as I deliberated within myself, I kept returning to two questions. In my view, the resolution of these two questions goes a long way to determining both which threshold should be applied, serious issue to be tried or strong *prima facie* case at the first stage, and the presence of irreparable harm to PetroChina.

[38] Those two questions are: first, what is it that PetroChina seeks to enjoin South Bow from doing? That is, what is the nature of the prohibition sought? And second, will the lack of an injunction actually result in PetroChina losing the option as opposed to PetroChina losing the option because the Arbitration Tribunal rules against it?

a. What Is Being Enjoined?

[39] So, I am going to talk about the first question, what is being enjoined?

[40] PetroChina's brief, at paragraph 86, states:

> PetroChina is seeking an extension of the status quo that currently exists between the parties. It is not seeking any positive obligations on South Bow. The

> injunction, if granted, does not require South Bow to do anything. The injunction would suspend the option period until the determination of the dispute by the tribunal, retaining the optionality that the tribunal would have if it were ruling on the dispute prior to December 24th, 2025, and would prevent South Bow from taking steps that are in conflict with the option until the dispute is resolved.

[41] I omitted from that quotation the part about requiring South Bow to cooperate and lend assistance in PetroChina's attempts to obtain the authorizations. That part of the relief was abandoned at the hearing, for surely that would make the application one for a mandatory injunction.

[42] So, I ask myself what could South Bow do that is in conflict with the option until the dispute is resolved by arbitration? While Mr. Trout[2] talked about another third party right of first refusal somewhere out there, PetroChina itself says that the evidence is so vague and ethereal that it cannot be relied upon. South Bow points out that while the parties are waiting to go to arbitration -- and this is found at paragraphs 7(b), (c), and (d) of its brief - that nothing can really change during that interval as both parties will retain their current ownership interests and there is a prohibition on transfer without consent found in section 9.2 of the LPA.

[43] So, if one of the main points of the injunction is to have South Bow do nothing, that is already achieved by the circumstances. Indeed, South Bow would be foolish to attempt to do anything to affect PetroChina's interests in light of the upcoming arbitration.

[44] The other main point of the injunction is to suspend the option period until final adjudication of the dispute by the tribunal. South Bow says that this is a request that the Court amend or modify the agreement between the parties, which should just not be allowed.

[45] Here, sophisticated, arms-length parties have negotiated a deal that includes a time limited option. The time limit is expressed to be 60 days. Accordingly, says South Bow, PetroChina seeks to have the Court alter the very deal that it bargained for.

[46] PetroChina asserts that section 9.4(d) permits the 60-day timeline in section 9.10 to be varied as circumstances required due to the *mutatis mutandis* language in the former section. Thus, there is no amendment of the agreement, just an application of what is presently there.

[47] It is this exact dispute that the Arbitration Tribunal is being called upon to decide.

[48] As noted, on November 24th, 2025, South Bow, in writing and in no uncertain terms, rejected the *mutatis mutandis* argument. It also took the position that without the authorizations in place, PetroChina's purported exercise of the option was invalid.

[49] Now, I want to take a moment to review some of the cases relied upon by PetroChina in support of its position that the injunction sought is prohibitive, not mandatory.

[50] The first case is ***International Steel Services Inc v Dynatec Madagasgar SA***, 2016 ONSC 2810. Here, the Applicant and Respondent disagreed about whether an agreement to operate a sulphuric acid plant had been extended or terminated. The Respondent took the position that it had been terminated and gave notice that it intended to take over the plant. The Court granted an interim injunction prohibiting the Respondent from taking over the plant until

[2] Blaine Trout is the Vice-President, Business Development & Commercial at South Bow Corporation who was Affiant on behalf of the Respondents, swearing an affidavit in opposition to the application on December 8, 2025, and being questioned on that affidavit on December 9, 2025.

the issue of extension or termination was decided in arbitration. The Court found that the Respondent's actions in trying to seize the plant while the arbitration was pending was high-handed conduct.

[51] Next, in ***McGinn v Bleeker***, 2024 ONSC 6379, the Applicant sought an interim injunction pending arbitration to prevent the Respondent from ousting her as a director and officer of the enterprise. The Court granted the injunction and characterized it as prohibitive even though the Applicant had already been removed. The injunction had the effect of reinstating her pending the arbitration. The rationale for doing so was to preserve the status quo.

[52] In so holding, the Court referred to the decision in ***TDL Group v 1060284 Ontario Ltd.***, 2000 CanLII 22736, [2000] CarswellOnt 4599, [2000] OJ No 4582 where the Divisional Court said, at paragraph 9:

> An order preventing the denial of a right previously agreed to is very different from a new right never agreed to and requiring the party to act accordingly.

[53] I reiterate that the very arbitration issue is whether the extension sought here exceeds the 60 days or is embedded in the *mutatis mutandis* language, i.e., whether a new right or a right previously agreed to.

[54] The next case is ***Kingsgate Property Ltd v Vancouver School District No 39***, 2023 BCSC 1266. The appellant sought to enjoin the Respondent from terminating a lease pending the appeal of an arbitration award which had ordered the Respondent to pay some $50 million in back rent owing by the Applicants. The Court prohibited the Respondent from evicting the Applicant for non-payment pending the appeal.

[55] The distinction between the present case and the cited cases is that in those cases, the Respondent was being specifically restrained from doing something, whether it was high-handed in the form of takeover of a sulphuric acid plant, ousting someone from her job, or evicting a tenant for non-payment of rent.

[56] Here, there is no real restraint being sought on South Bow's conduct and, on this record, South Bow is moreover incapable of doing anything to affect PetroChina's rights pending arbitration. It has already done everything it can do by rejecting PetroChina's position.

[57] So, in the end, I am still left to ponder what it is that I am supposed to be enjoining South Bow from.

b. Will Lack of Injunction Result in Loss of Option?

[58] I move then to my second question, which is whether the lack of an injunction really results in PetroChina's loss of the option.

[59] South Bow's position on this question is that PetroChina's loss of the option will be the result of its failure to perfect, under section 9.10, something that PetroChina bargained for in the first place. This outcome will be the result of PetroChina not securing the authorizations by December 24th, 2025, and the Arbitration Tribunal eventually finding against PetroChina on both of its arguments.

[60] As for PetroChina, the remedy it seeks from the arbitration panel would validate the Notice of Exercise of Option delivered on November 21st, 2025. It would also erase December 24th, 2025 as the date of closure of the option and extend it to whatever date the authorizations

are finally received or finally denied. That remedy would reach into the past to November 21st and also give PetroChina the runway to get the authorizations squared away or not.

[61] That runway may be either retrospective, in that PetroChina gets the authorizations after December 24th, 2025, but before the date of the arbitration award; or, in the future if PetroChina does not have the authorizations as of the date of the arbitration award. In either event, PetroChina seeks validation of the option period to that date, whether it is retrospective or prospective as of the date of the arbitration award.

[62] Counsel for South Bow conceded, upon specific question from me, that the Arbitration Tribunal has the jurisdiction to grant the relief that PetroChina seeks. So, I asked counsel for PetroChina why PetroChina needs the injunction from the Court when the arbitration panel can give PetroChina everything it wants.

[63] The reply I received was that conceivably the Arbitration Tribunal could say that PetroChina is granted additional time, say another 60 days from the purchase notice date, to close the option, but it would be a nugatory result because that period of time would have already passed.

[64] After that response, I asked counsel what findings the tribunal would have to make in order to reach that conclusion. The reply I got was that counsel could conceive of a world where that result could happen. He referred to this scenario as “winning the battle but losing the war.” In other words, a pyrrhic victory, as it were, in which all goes for naught.

[65] So, the point of the injunction is to protect PetroChina from a decision of the tribunal that gives PetroChina extra, but still not enough, time to achieve the authorizations and close the option. And as its counsel said, this outcome is conceivable, but it is hard to attach a degree of likelihood to it.

[66] So, I go back to the Notice to Arbitrate and the relief that PetroChina asks for. First, a declaration that PetroChina validly exercised the option on November 21st, 2025, and secondly, a declaration that the option remains open to closing until such time as all authorizations have been received or denied, including any appeals or reviews.

[67] Now, maybe I am just being unduly semantically precise here, but if the Arbitration Tribunal gives PetroChina additional time to complete the option, let's say a further 60 days from December 24th, 2025, and that additional time has already expired, that would mean that PetroChina was unsuccessful in persuading the arbitration panel to grant the remedy sought. That would be losing both the battle and the war, so to speak, in metaphoric terms.

[68] In that instance, is the loss of the option a function of no injunction or a function simply of the operation of the agreement as written? That is, there was a dispute about how the agreement works, the dispute was submitted to arbitration, and the Arbitration Tribunal gave its decision. Suppose that the Arbitration Tribunal extended the time for completing the option to, let us say, February 24th, 2026, and the award was issued on, let us say, April 24th, 2026. So, even though the completion date was extended by the Arbitration Tribunal, it still expired before the award was issued. This is the “winning the battle but losing the war” scenario.

[69] By granting the injunction to the date of the award, in this scenario, and allowing PetroChina to rely on the injunction to complete the option, I would, in effect, be overruling the Arbitration Tribunal even before it made its decision, and the injunction could introduce something new to the agreement. It hypothetically could give PetroChina rights over and above

the outcome that the arbitration panel directs, the outcome that the Arbitration Tribunal says the agreement bears. Of course, since no one knows at this moment what the arbitration panel will ultimately decide, all we can speak about at this moment are hypotheticals.

[70] Then there is the converse scenario where PetroChina is able to get the authorizations, although well past December 24th, 2025, but before or even after the Arbitration Tribunal makes its decision. If that were the case, the Arbitration Tribunal could validate the option up to and including the date on which the authorizations are in hand. That would be perfectly fine, would not add anything to the rights in the agreement because that is how the Arbitration Tribunal interpreted the agreement, and no injunction would have been required.

[71] I realize that South Bow's cooperation and assistance would be helpful in obtaining the authorizations. PetroChina has expressly disavowed claiming that relief in this application.

[72] Like the other scenario where additional time is recognized by the Arbitration Tribunal but has already passed, it is difficult to ascribe any degree of likelihood to this scenario. In this scenario, everything turns out perfectly fine for PetroChina. If one is within the range of conceivable outcomes, then so is the other.

[73] So, I would like to summarize on this point. This is the range of possible outcomes of arbitration: First, the Arbitration Tribunal finds against PetroChina and in favour of South Bow. In essence, that the option period expired on December 24th, 2025. That is not the outcome that PetroChina wants, but in this event, whether an injunction is in place or not is completely irrelevant.

[74] The second possible outcome is that the Arbitration Tribunal could find in favour of PetroChina and against South Bow and validate the option period to whatever date that PetroChina gets the authorizations, whether retrospectively or in the future. In that event, whether the injunction is in place is again irrelevant because PetroChina got exactly what it wanted from the Arbitration Tribunal.

[75] Third is the “winning the battle but losing the war” scenario. In this scenario, the Arbitration Tribunal awards extra time, but it is not enough, and the option is lost. This is the scenario that PetroChina seeks to guard against. Here, an injunction is relevant because it preserves the option period up to the date of the award. But the option period created by the injunction in this scenario is longer than the option period decided by the Arbitration Tribunal.

[76] In the third scenario, number one, I have taken the decision away from the Arbitration Tribunal and made it myself; and number two, I have amended the agreement because the Arbitration Tribunal said the agreement can only be construed to extend the option period an additional 60 days, but I have extended it 100 or 200 days.

[77] If PetroChina were to lose the option because the third scenario occurs, I say the loss is not because of the lack of an injunction, it is because PetroChina failed to achieve the second scenario, which is success on the primary issue submitted to arbitration. Therefore, in my view, the lack of an injunction would not be the cause of the loss of the option, but rather because the Arbitration Tribunal ruled against PetroChina.

G. Application of the *RJR-MacDonald* Test

[78] So, finally, I move to the application of the ***RJR-MacDonald*** test and consider first the strength of the Applicant's case.

a. Which Threshold – Serious case to be Tried or Strong *Prima facie* Case?

[79] ***RJR-MacDonald*** determined that, in most cases, the appropriate test is whether the plaintiff has presented a serious issue to be tried. The threshold is admittedly low, requiring only that the claim not be one which would be liable to be struck out as frivolous or vexatious.

[80] However, ***RJR-MacDonald*** itself recognized that there are certain exceptions when a more stringent examination of the merits is called for.

[81] I find that with regard to the one scenario that PetroChina seeks to guard against, the "winning the battle but losing the war" scenario, the Court would be awarding an injunction that is something in excess to what the agreement currently provides. That is, if the Arbitration Tribunal says that PetroChina is entitled, under the agreement, to an extra 60 days, but my injunction gives them 120 or 200 days, then the injunction gives PetroChina something in excess of what the agreement provides.

[82] Further, as discussed above, there is nothing really to be prohibited. The parties have staked their position, the lines are drawn, and they are proceeding to arbitration. South Bow cannot effectively do anything to further affect PetroChina's rights.

[83] So, that takes me back to the ***International Steel*** case, where the Court says:

> It is stated in Sharpe – [that is, Professor's Sharpe's textbook on Injunctions] - that a mandatory order is usually restorative in effect. The plaintiff is asking the Court to order the defendant to take the necessary positive action to put the situation back to what it should be. Usually, that can be achieved at trial. A negative order will stop the defendant from taking further action pending trial.
>
> Here, ISSI – [which was one of the parties] - is in substance not asking the Court to order Dynatec to take positive action to put the situation back to what it should be but rather is asking the Court to order Dynatec to stop taking steps that interfere with the rights under the agreement.

[84] A case not specifically cited by either side, but cited within the ***McGinn v Bleeker*** case, is a decision by Justice Ross of this Court, ***Shipka v Trevoy***, 2012 ABQB 416. She says at paragraph 45:

> The distinction between prohibitory and mandatory injunctions is not necessarily clear. Professor Sharpe defines a mandatory injunction as one which requires the Defendant to act positively, including by undoing a wrong and taking the steps necessary to repair the situation in a manner consistent with the plaintiff's rights. A prohibitive injunction restrains the defendant from committing a specific act.

[85] The situation as it was on the date of application, and is today, is that PetroChina asserts and asked South Bow to recognize the exercise of the option is valid and that the option period to complete continues until the authorizations are in hand. South Bow, by its reply letter of November 24th, 2025, rejected both positions. PetroChina says that South Bow's position is

wrong, both because of the circumstances, and because *mutatis mutandis* language in the agreement allows PetroChina to consider the option period to be extended.

[86] It may not seem like much of a thing, but what the injunction would have the effect of doing is temporarily rescinding South Bow's November 24th, 2025 letter. In this sense, the injunction would be restorative or undo what PetroChina perceives is a wrong.

[87] Further, what PetroChina basically sought from South Bow in its November 21st, 2025 correspondence was a tolling agreement, so that the option period could live on. There was an amendment mechanism in the agreement whereby South Bow could have agreed to toll the option period, but it specifically chose not to do that. Now, by granting an injunction even though there is no tolling agreement, I would be imposing a tolling provision on South Bow.

[88] I also have regard to the case of ***Alan Arsenault Holdings Ltd v TDL Group Corp***, 2016 ABQB 97, cited by South Bow, where Justice Neufeld said at paragraph 51:

> An order amending dates for performance of certain actions and restating the financial obligations of the parties in accordance with those dates ... would constitute the imposition of a new contractual obligation to replace one that was inadequately described in the [Settlement] Agreement to begin with. That is not the role of the Court. It is not the purpose of a prohibitive, as opposed to mandatory, injunction.

[89] To me, all of that makes this application one for a mandatory as opposed to a prohibitive injunction, and therefore the higher standard of strong *prima facie* case applies.

b. Is There a Strong *Prima facie* Case?

[90] Now that I have arrived at the standard, I will move to the actual arguments. There are three prongs of arguments raised by PetroChina: contractual interpretation, a relief from forfeiture argument mentioned in the Notice to Arbitrate, and the good faith argument mentioned in the brief.

[91] The case before the arbitration panel is one involving contractual interpretation, and specifically whether the *mutatis mutandis* language in section 9.4(d) permits the variation of the 30-day period stipulated in section 9.10 for getting the authorizations.

[92] PetroChina relies on an English language dictionary for the meaning of *mutatis mutandis* as “with the necessary changes having been made”; or, “with the respective differences having been considered”. That provides room, PetroChina submits, for the content of section 9.10 to change according to circumstances, particularly to avoid the absurd result where it is impossible to comply due to the inadequate timeline. PetroChina says that the text itself does not admit to a limiting effect on the words *mutatis mutandis*.

[93] South Bow says that the use of *mutatis mutandis* is merely a drafting device so that language in one section does not have to be repeated in another. The effect of the phrase in section 9.4(d) is simply to import the procedure from section 9.10 so it can apply to an option arising from a change in ultimate parent as opposed to an option materializing because of bankruptcy or forced transfer.

[94] South Bow relies on Supreme Court of Canada authority in a criminal case, ***R v Penunsi***, 2019 SCC 39 (CanLII), [2019] 3 SCR 91, to say that the phrase applies only to points of detail in statutory interpretation. That authority has been adopted by the Court of Appeal of this province

in a civil context dealing with interpretation of the *Rules of Court* in ***Real Estate Council of Alberta v Moser***, 2023 ABCA 57 at para 10.

[95] South Bow also cites an Ontario case, ***Tehama Group Inc v Pythian Services Inc***, 2024 ONSC 1819 for the use of *mutatis mutandis* in a contractual context as a phrase used to incorporate terms from one provision into another - that is, all necessary changes having been made -- supporting the view that the phrase is a drafting device rather than a substantive provision that creates leeway for extending rights.

[96] From this reading of the case law, South Bow's position seems to me to be the stronger. On my reading of the two sections, it appears to me that both the intent and effect is that the procedures for invocation of an option in circumstances of bankruptcy or involuntary transfer will also apply in the circumstances of change in ultimate parent.

[97] The language refers specifically to procedures which are the mechanics of exercising and completing the option. These mechanics may be, but not necessarily are, different when the context for the share transfer is change in ultimate parent versus the context of bankruptcy. Revising the mechanics, in my view, would not include enlarging the rights of one party.

[98] PetroChina's view of the effect of *mutatis mutandis* language is also inconsistent, I say, with section 14.5 of the LPA dealing with amendments. Why would an amendment provision requiring consent be necessary when amendments can be dictated by circumstances and authorized through the *mutatis mutandis* provision? Allowing circumstances to dictate and define rights also detracts from the commercial certainty that momentous agreements, such as the LPA and the USA, demand.

[99] So, I say that the purpose of section 9.4(d) is to create congruence between the situation of a transfer of shares triggered by change in ultimate parent and a transfer of shares triggered by bankruptcy or involuntary transfer under section 9.10. If a purchasing partner in the latter situation, that is the triggering event was bankruptcy or involuntary transfer, found itself in the same position that PetroChina finds itself in, that is with not enough time to get the authorizations, then what recourse would the purchasing partner have? Its recourse would be to go to section 14.5 and request a consensual amendment from the selling partner to extend the option period so that it is afforded more time to achieve the authorizations. But it would not be entitled to say, “can't do it within 60 days, not practical, so an extension is automatic.”

[100] So, why would the purchasing partner be entitled to extend the option because of circumstances in the case triggered by a change in ultimate parent but not be able to do so in circumstances of a sale triggered by bankruptcy or involuntary transfer? The circumstances of not enough time to get the authorizations could occur under either.

[101] My point here is that since the intention of 9.4(d) is congruence, using the *mutatis mutandis* language cannot mean conferring a right in the case of a transfer because of change in ultimate parent that does not exist for transfer because of a bankruptcy or involuntary transfer. That is simply my view based on a reading of the two provisions. As I said, it is not binding or meaningful except for this application.

[102] My conclusion on this point is that the strength of PetroChina's case on the merits does not meet the threshold of strong *prima facie* case on this argument.

[103] I will move then to relief from forfeiture. This was not pressed a great deal in oral argument. Actually, relief from forfeiture is a remedy requested from the Arbitration Tribunal in the event the main contractual interpretation argument fails.

[104] If section 9.10 ends up being strictly read, then it is impossible to perform, which PetroChina says entitles it to be relieved from loss of the option because of the impossible circumstances.

[105] In response, relying on the Supreme Court of Canada decision in ***Saskatchewan River Bungalows Ltd v Maritime Life Assurance Co.***, 1994 CanLII 100 (SCC), [1994] 2 SCR 490, South Bow says there must first be a breach on the Applicant's part from which it should be excused by equitable relief. Here, PetroChina alleges no breach on its own part, only that circumstances have led or will lead to the option expiring.

[106] In its brief, PetroChina also posed a good faith argument, namely that South Bow failed to respond substantively to the letter from PetroChina dated October 16th, 2024, in which the prospect of extending the option period in order to obtain authorizations was first raised. PetroChina says that South Bow essentially laid in the weeds for an entire year before objecting to the notion of extensions. Thus, PetroChina was lulled into not taking quicker action and now finds itself in this untenable position.

[107] PetroChina submits that South Bow has, accordingly, breached its duty of good faith under the general organizing principle of good faith and the duty of honest performance as set out by the Supreme Court of Canada in the well-known case of ***Bhasin v Hrynew***, 2014 SCC 71, [2014] 3 SCR 494.

[108] South Bow responds that it is taken by surprise by this argument; that it was not raised in cross-examination of Mr. Trout, nor in the Notice to Arbitrate, nor in the Originating Application for this matter, nor in Mr. Luo's affidavit.[3]

[109] The whole issue of not stating grounds in an Originating Application and having the argument pop up for the first time in a brief was, coincidentally, addressed by me in a case cited by South Bow, although not for that purpose. In ***ONE Properties Holdings Corp v Turtle Bay Investments Ltd***, 2025 ABKB 313 found at Tab 32 of South Bow's brief, I deal with this at paragraphs 62 and 63. The upshot is that the purpose behind *Rule* 6.3(2) requiring grounds to be stated in the Originating Application is to prevent surprise. Depending on the degree of disadvantage, there are different consequences ranging from not allowing the argument to be made to costs implications.

[110] Here, South Bow's counsel did say it was unfair to spring the argument on them without notice, but in any event, they met it head on by saying that the October 16th, 2024 letter does not impose an onus on South Bow to disagree and therefore, there is no breach of the duty of honest performance. Further, South Bow says because of surprise and ***Browne v Dunn*** concerns, I should give the argument little weight.

[111] In the end, I cannot say there is a strong *prima facie* case that either relief from forfeiture should be granted or that South Bow has engaged in a lack of good faith because of the October 16th, 2024 letter.

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[3] Qiang Luo is the Senior Vice President of PetroChina Canada Ltd who swore a December 4, 2025 Affidavit in support of the application and was questioned as affiant on December 8, 2025.

c. Irreparable Harm?

[112] Now, I move on to the question of irreparable harm in case another Court disagrees with my assessment of the appropriate standard and my assessment of whether that standard is met.

[113] PetroChina says that its irreparable harm is loss of the option but that can be restored by the tribunal and that is exactly what PetroChina is asking for in the arbitration. In my view, harm cannot be irreparable if the Applicant can be put in the exact place it wants to be by the decision-maker making the final decision. South Bow opposes that outcome but concedes that the Arbitration Tribunal has jurisdiction to make that decision.

[114] Second, as I concluded above, in the absence of an injunction, each party retains its respective interests, and the pipeline enterprise carries on as before. The state of things will persist until the Arbitration Tribunal makes a decision one way or the other.

[115] Third, as to the harm that PetroChina seeks to protect itself against, that of the "winning the battle but losing the war" scenario to which no likelihood attaches, there is just as much likelihood that PetroChina will achieve everything it wants in arbitration since it is impossible at this point to attach a degree of likelihood to either.

[116] Moreover, if PetroChina ends up losing the option because it was unsuccessful in arbitration, then the loss cannot be attributable to the lack of an injunction. It is rather attributable to the expiry of the option as determined by the Arbitration Tribunal. As such, I find that no irreparable harm is shown.

d. Balance of Convenience

[117] Now, having found as I have so far, there is really no formal need to address the balance of convenience test, but I wanted to make one observation. In terms of harm to South Bow, South Bow asserted that an injunction may lead to PetroChina getting its authorizations and then completing the option under the injunction and not even waiting for the Arbitration Tribunal to make a decision.

[118] PetroChina could then acquire the entirety of the pipeline enterprise and sell it to a third party thereby cutting South Bow out of the business entirely. PetroChina's counsel described this hypothetical as fantastical.

[119] I do not think there is any real prospect of harm to South Bow here. While in theory, this scenario is possible, PetroChina, through its counsel, said it has no intention of attempting to complete the option prior to a ruling from the Arbitration Tribunal. It also made the same commitment in writing in its brief.

[120] From what I have heard, both sides are committed to having the arbitration panel make the final decision, so I don't see a risk to South Bow. But that is beside the point in light of my rulings on the first two parts of the test.

[121] For PetroChina's part, as I have found, the lack of an injunction is not an impediment to the granting of a remedy by the arbitration panel and therefore, there is a risk on the "winning the battle but losing the war" scenario that I grant a remedy that is in excess of what the Arbitration Tribunal grants and thereby give rights to PetroChina that the Arbitration Tribunal says PetroChina does not have.

[122] So, in the result, there is no balance of convenience argument for either party.

H. Outcome

[123] Having regard to the totality of the foregoing and considering the three components of the test in aggregate, the application for an interlocutory injunction is denied.

[124] With respect to costs, counsel have 30 days within which to come to an agreement on behalf of the parties. If that is not achieved, then South Bow may make written submissions within 45 days followed by PetroChina's response submissions within 60 days. The submissions should come in letter form not to exceed 3 single-spaced pages, excluding exhibits and authorities, and supported by a draft Bill of Costs.

[125] I thank counsel for the thorough and well-done briefs and high level of advocacy.

Heard on the 11th day of December, 2025.
Oral Reasons for Decision delivered on the 18th day of December, 2025.
Dated at the City of Calgary, Alberta this 7th day of January, 2026.

Douglas R. Mah
J.C.K.B.A.

Appearances:

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Karen Wyke, Claire Himsl and Jo Colledge-Miller
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Appendix A

Sections 9(4)(d) & 9.10(a) of the LPA

9.4 Transfers of Limited Partnership Interests

…

(d) If at any time the Affiliate described in Section 9.4(b)(iii) is no longer an Affiliate of the Ultimate Parent of the Transferring Partner as set forth in such Section, and the event causing the Affiliate not to be an Affiliate of the Ultimate Parent of the Transferring Partner is not a Change in Control triggering Section 9.5, then the Transferring Partner shall be deemed to be a Subject Limited Partner as set forth in Section 9.10(a)(ii) and the other Partners other than the Transferring Partner and its present and former Affiliates shall have the Option described in Section 9.10(a) to purchase all of the Partnership Interests held by the Transferring Partner and its present and former Affiliates using the procedures set forth in Section 9.10, *mutatis mutandis*.

….

9.10 Bankruptcy or Other Involuntary Transfer

(a) In the event:

(i) of the Bankruptcy of any Limited Partner; or

(ii) of the Transfer, voluntary or involuntary, by any Limited Partner of all or any part of its Limited Partnership Interests to any creditor, in total or partial satisfaction of any debt, obligation, judgment or other liability (any trustee in Bankruptcy under this Section 9.10(a) or any such creditor being herein called the "**Involuntary Transferee**" and the bankrupt Limited Partner referred to in Section 9.10(a)(i) or the Limited Partner whose interest passes to the Involuntary Transferee herein being called the "**Subject Limited Partner**"); or

then the Subject Limited Partner shall notify the Partnership and each other Partner within 72 hours of such event and each of the other Limited Partners (other than the Subject Limited Partner) shall have the sole, exclusive, irrevocable option (the "**Option**") to purchase all of the Subject Limited Partner's Limited Partnership Interests (the "**Subject Limited Partnership Interests**") from the Subject Limited Partner or the Involuntary Transferee. The Option shall be exercisable by such Limited Partners (the "**Other Limited Partners**") within a period of 30 days following the date on which the Partnership gives notice of the existence of the Option and the amount of the purchase price determined in accordance with Section 9.10(c), *provided* that, if all filings, notices and Authorizations necessary to complete the purchase have not been made, given or obtained by that date, the Option shall be exercisable for up to a further 30 days in order to make, give or obtain the filings, notices or Authorizations.