

KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 35**

Date: **2026 02 11**
File No. **KBG-SA-00133-2024**
Judicial Centre: **Saskatoon**

BETWEEN:

ORANO CANADA INC.

PLAINTIFF

- and -

UEX CORPORATION

DEFENDANT

Counsel:

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for the plaintiff
for the defendant

JUDGMENT
February 11, 2026

R.S. SMITH J.

[1] Paragraphs 1 to 4 of the plaintiff's brief provide a succinct context for the debate before the Court:

1. ... In its claim, Orano seeks a declaration that the rights and obligations of Orano and UEX under s. 6 of the West Athabasca Option Agreement dated November 10, 2004 (the "**Option Agreement**") expired on December 31, 2007, and that any mineral disposition to be acquired by Orano in the Area of Interest (as defined in the Option Agreement) is not subject to the Option Agreement.

2. The Option Agreement includes an area of interest provision ([clause] 6.1) [Option AOI] which expressly states it applies during the Option Period [altered for clarity]. The Option Period expired on December 31, 2007 when UEX exercised its option. Thereafter, joint ventures were established between Orano and UEX governed by the principal terms set out in s. 2.6 of the Option Agreement. The principal terms do not include the Option AOI.
3. Despite the fact the Option AOI expired at the end of the Option Period, UEX asserts it applies to the joint ventures. It does not, and Orano seeks a declaration from the Court to this effect.
4. The application requires the Court to interpret the Option Agreement.

Background

[2] Orano Canada Inc. [Orano] is a uranium exploration, mining and milling company that has been carrying on business, primarily in northern Saskatchewan, for over 60 years. It has been previously known as Cogema Resources Inc. and Areva Resources Canada Inc. before changing its name to Orano Canada Inc. in 2018.

[3] UEX Corporation [UEX] is a uranium exploration company formed in 2001 and is publicly traded.

[4] In 2003, Orano was exploring areas of the West Athabasca Basin, including mineral dispositions in the Shea Creek, Douglas River, Erica, Alexandra, Laurie, Nakita, Uhrich and Mirror River Projects [Projects].

[5] Each of the Projects consisted of groups of mineral dispositions owned by Orano. Orano was looking to identify geological targets within the vicinity of the Projects and adjacent areas. In late 2003 and early 2004, Orano initiated discussions with UEX regarding potential investment in the exploration of the Projects.

[6] The Projects were at different stages of exploration with the majority of

same still at the early stage. It is common for owners of Saskatchewan mineral dispositions to look to possible investors to share the cost, risk and return from the exploration process.

[7] On March 5, 2004, Orano and UEX executed a letter agreement setting out the basic terms of a proposed Option Agreement for the Projects, which provided that UEX would be granted an option to acquire up to a 49 percent interest in the Projects by expending \$30 million over the course of 11 years.

[8] The parties began negotiating the terms of the Option Agreement. There was considerable back and forth and lawyering involved. However, the parties did execute the Option Agreement on November 10, 2004, with an effective date of March 5, 2004. (See Tab 3 of Orano's Compendium of Evidence).

[9] The Option Agreement provided at clause 6.1 for an area of interest:

6.1 Area of Interest

As of the Effective Date but prior to the exercise of the Option, the parties agree to create an area of interest surrounding the Mineral Dispositions, as further described and outlined in Schedule "D" (the "Area of Interest") to enable the parties to jointly explore the Area of Interest in the manner as generally outlined in Schedule "E". Accordingly, if at any time after the Effective Date either party acquires ownership, either directly or indirectly, of any mineral disposition within the Area of Interest such additional mineral disposition will, except as provided in Section 6.2, be subject to the terms and conditions of this Agreement as if it were one of the Mineral Dispositions hereunder.

[10] Paragraph 41 of Orano's brief provides context for the Area of Interest clause:

41. It is common for uranium exploration option and joint venture agreements to include an area of interest provision. The standard area of interest in the uranium industry is a 1-to-2-kilometre radius surrounding the mineral claims in the

project area. [Robbins Affidavit at para 40 and Affidavit of Jim Corman at para 40, See also Orano's Read-in Tab 3 wherein Mr. Hamel confirmed that he has generally seen areas of interest "up to about 2 kilometers".] It is not uncommon for mineralizations in a project area to extend outside the boundaries of the claims. The area of interest generally requires that where claims are staked by either party in the "buffer area", the other party must be provided an opportunity to participate. [See Corman Affidavit at para 40. See also Orano's Read-in Tab 3 wherein Mr. Hamel confirmed that an area of interest is a "buffer around a project within which ... either company or a party to the joint venture or option acquired a project within that buffer, it would have to be offered to the other parties of the option or joint venture".] This ensures that project participants cannot, without providing an opportunity for other participants to participate, use confidential information arising from exploration within a project area to stake adjacent areas containing mineralization extending from the project area. [Corman Affidavit at para 40 and UEX's Read-in Tab 8, p 103.]

[11] The Option Agreement contemplated that upon the exercise of the option (payment of \$30 million), a joint venture would be entered into by the parties for each project.

[12] Paragraphs 50 to 52 of Orano's brief outline the background of how the Option Agreement addressed the joint venture:

50. Section 2.6(a) of the Option Agreement provides that joint ventures for each Project are established upon exercise of the Option, and the parties are required to contribute their participating interests in the Mineral Dispositions for each Project to each joint venture:

2.6 Establishment of a Joint Venture

(a) Upon the exercise of the Option in accordance with Section 2.4, the parties will establish a joint venture for each Project (collectively referred to as the "Joint Ventures" and individually as the "Joint Venture") for the purposes of exploration, development and production

of minerals from the Project, as applicable. Each party will contribute their respective participating interest in the Mineral Disposition for that Project to the Joint Venture.

51. Section 2.6(b) provides that each Joint Venture would incorporate the “principal terms” listed in subsections 2.6(b) (i) to (xi) [The Principal Terms include terms respecting management committee, cost sharing, deemed expenditures, dilution thresholds, minimum programs and budgets, minimum interests, operatorship, changes in operatorship, disposition of product, rights of refusal, and term.] (the “**Principal Terms**”), and that “*until formal joint venture agreements are agreed to and executed by the parties pursuant to s. 2.6(c), the Joint Venture will be governed by the [Principal Terms]*”.
52. Section 2.6(c) requires the parties to negotiate and execute formal Joint Venture Agreements for each Joint Venture which incorporate the Principal Terms and “*such other terms typically contained in Saskatchewan uranium joint venture agreements*”, failing which the matter shall be decided by arbitration. If the form of Joint Venture Agreement is settled by the parties (or by arbitration) before exercise of the Option, the parties shall execute the Agreements on exercise of the option. If the form is settled after the Option is exercised, the parties are required to execute the Joint Venture Agreements. [Corman Affidavit at Exhibit F, s. 2.6(c).] Pending the execution of formal Joint Venture Agreements, the Principal Terms govern. The provision is set out below [Corman Affidavit at Exhibit F, s. 2.6(c)]:

(c) The Joint Ventures and all operations in relation to the Joint Ventures will be governed by mutually agreeable joint venture agreements (the “Joint Venture Agreements”). And the parties are required to negotiate in good faith the Joint Venture Agreements for each Project which will incorporate the terms set out in s. 2.6 [Principal Terms] **and which will contain such other terms and conditions as the parties agree to and as would typically be contained in a joint venture agreement** for uranium exploration, development and production venture in Saskatchewan. If the parties

cannot reach agreement as to one or more terms of the Joint Venture Agreements, such matter shall be settled by arbitration by a single arbitrator pursuant to the Arbitration Act of Saskatchewan. If the form of the Joint Venture Agreements is settled by the parties prior to the exercise of the Option, the parties will execute and deliver to each other Joint Venture Agreements on the Option being exercised. If the form of the Joint Venture Agreements is settled after the Option is exercised, the parties will forthwith execute and deliver such Joint Venture Agreements. [Emphasis added]

[Emphasis in the Orano brief]

[13] Clause 2.4 of the Option Agreement provides:

2.4 Exercise of Option

The Option will be deemed exercised upon the following events:

- (i) UEX satisfying all its funding obligations set forth in Section 2.1 (a); or
- (ii) this Agreement is terminated in accordance with Section 8 and UEX has earned, at a minimum, a Partial Earned Interest.

Upon exercise of the Option, this Agreement will become an agreement for the transfer and assignment by Owner to UEX of the Earned Interest or any Partial Earned Interest, as appropriate, as a tenant-in common in and to the Mineral Dispositions free and clear of any mortgages, liens, charges, pledges, security interests, encumbrances and any other claims of any description other than the Royalty.

[14] By December 31, 2007, UEX had satisfied all its obligations under the Option Agreement. Orano transferred UEX's earned interest (49 percent of the Mineral Dispositions) to UEX shortly after December 31, 2007.

[15] Upon the exercise of the option by UEX, the only remaining obligation was to enter into a joint venture for each project as contemplated by clause 2.6(a) of the Option Agreement.

[16] The first salvo respecting the terms of a proposed joint venture was fired on March 5, 2008 by counsel for UEX. After that, there was considerable back and forth between the parties as to the terms and much high-level wordsmithing. Suffice it to say, the parties' efforts were unblemished by success.

[17] Efforts at striking a joint venture were stalled by 2011, although there were some attempts that followed, also to no avail. In July 2014, Orano successfully acquired two claims and UEX acquired several others. This immediately raised the issue of Area of Interest in the Option Agreement. UEX took the position that the Option AOI applied. Orano conducted a brief review and agreed with UEX's position. Of course, Orano now resiles from this and asserts it was in error.

[18] Each party carried on their business and each operated on the basis that the Option AOI in the Option Agreement still applied. There were even attempts at finally creating a joint venture agreement, but, again, they were unsuccessful.

[19] The executive level at Orano believed the Option AOI was applicable from 2014 to 2020. At that point, Orano's corporate mind had the epiphany that the Option AOI no longer applied.

[20] Orano wrote to UEX's new President and Chief Executive Officer on September 20, 2023, confirming its position that the Option AOI was terminated and asked UEX to provide it with a confirmatory acknowledgement of same.

[21] UEX replied on September 21, 2023, indicating that it did not agree with Orano's interpretation of the Option AOI, and thus the table was set for this application.

Summary Judgment

[22] Orano asserts that the issue is narrow enough and the evidence sufficiently uncontradicted that summary judgment is appropriate. UEX's position is

that summary judgment is not appropriate in this instance. Starting at paragraph 38 of its brief, it posits:

38. Rule 7-5(1)(a) empowers a court to grant judgment using the summary judgment process, provided the court is satisfied there is no genuine issue requiring a trial with respect to a claim or defence. [*Seewalt v Saskatchewan*, 2024 SKCA 100 at para 28 [*Seewalt*]. See also *Hryniak v Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87 [*Hryniak*] at para 49]. There will be no genuine issue for trial when the process 1) allows the judge to make the necessary findings of fact; 2) allows the judge to apply the law to the facts, and 3) is a proportionate, more expeditious, and less expensive means to achieve a just result. [*Hryniak* at para 49]. In assessing whether a genuine issue requiring a trial exists, the judge hearing the application must decide this question based solely on the evidence submitted by the parties. [*Seewalt* at para 28].

39. A genuine issue for trial exists where:

- (a) The record contains several affidavits, conflicting evidence relating to the surrounding circumstances relevant to contractual interpretation, and there is an outstanding cross-examination application. [*Ter Keurs Bros. Inc. v Last Mountain Valley (Rural Municipality)*, 2019 SKCA 10 at paras 33-35 and 50-54].
- (b) The chambers judge cannot make the necessary findings of fact regarding whether a party acted in good faith because the credibility of one of the affiants is a critical issue in the case. [*Viczko v Choquette*, 2016 SKCA 52 at paras 38-42 and 51-52].
- (c) The outcome of the case turns on the interpretation of an agreement, there is more than one applicable agreement, and there is significant conflict in the affidavits regarding the meaning of certain terms, the intentions of the parties and the surrounding circumstances. [*LaBuick Investmentws Inc. v Carpet Gallery of Moose Jaw Ltd.*, 2017 SKQB 341 at para 32].
- (d) The plaintiff's evidence is not sufficiently clear to establish the terms of an oral agreement, and the court

would benefit from hearing and observing the witness and cross-examination. [*Tchozewski v Lamontagne*, 2014 SKQB 71 at paras 40-42].

40. Here, a genuine issue for trial exists because:
- (a) The Court would benefit from hearing from witnesses directly to assess their reliability, credibility and draw inferences. If the subsequent conduct evidence is also relevant, then the events at issue happened over a 20-year period and involved numerous people, some of whom have not provided affidavits.
 - (b) Both parties have raised issues about the admissibility of each other's affidavit evidence. These issues would be better addressed, and in some cases eliminated, would be eliminated entirely, if *viva voce* testimony were being heard in the context of a full trial.
 - (c) An understanding of the uranium exploration and development industry is integral to the court's appreciation of the commercial objectives of the Option Agreement. The Court may benefit from a more fulsome record about this highly technical industry with the opportunity to ask the witnesses questions about some of the information referred to within their affidavits. UEX has provided some expert evidence to address the specific issue before the Court, but Orano has not provided any expert evidence to substantiate its affiants' lay opinions or sufficient background on the terminology and practices discussed.
 - (d) Orano has argued that there are conflicts in some of the surrounding circumstances evidence and the subsequent conduct evidence, which may be relevant if the court determines there is ambiguity.

41. As such, this matter is not appropriate for summary determination. However, in the event that this Court determines that there is no genuine issue for trial, the remainder of this brief demonstrates that Orano's Application, and its underlying Claim, should be dismissed.

[23] Orano's rejoinder is contained at paragraphs 113 to 115 of its brief, which posits:

113. Whether the Option AOI applies to Orano and UEX's joint ventures is a question of contractual interpretation that can be resolved by reference to the Option Agreement. [See e.g., *Agrocorp Processing Ltd. v G.F. Farms Ltd.*, 2023 SKKB 219 at para 4 wherein the Court found that the matter was largely a matter of contractual interpretation that was well-suited for summary judgment]. There are no disputed issues of fact or credibility that require a trial. The matter is thus ideally suited for summary judgment. [See *McCorriston v Hunter*, 2019 SKCA 106 at para 44, 33 RFL (8th) 310 wherein Justice Leurer (as he then was) held that the issue in determining whether summary judgment is appropriate in most cases is whether resolution of the claim require a trial to sort out the facts].
114. Section 3-3 of *The King's Bench Act* provides that the Court may make a binding declaration of right and that no action or matter is open to objection on the ground that a mere declaratory judgment or order is sought. Declaratory relief is discretionary and will typically be appropriate where (a) the Court has the jurisdiction to hear the issue, (b) the dispute is real and not theoretical, (c) the party raising the issue has a genuine [interest] in its resolution, and (d) the responding party has an interest in opposing the declaration being sought. [*S.A. Metro Vancouver Housing Corp.*, 2019 SCC 4 at para 60, [2019] 1 SCR 99].
115. The dispute between Orano and UEX is real and not theoretical, and both parties have a genuine interest in its resolution. UEX has sought to leverage Orano through the purported applicability of the Option AOI to the joint ventures, implicitly threatening legal action if Orano does not offer it the opportunity to acquire claims it stakes in the Option AOI. This places Orano in the untenable position of either gratuitously offering its claims to UEX or facing near-certain litigation. [See e.g., *Beaver v Nicholas*, [1952] 2 DLR 315 at paras 19-26 (BC SC) wherein Justice Wood held that it was appropriate to grant declaratory relief relating to whether parties continued to be bound by their contractual obligations as refusing declaratory relief would place the parties in the position of gratuitously performing the contract or being exposed to a significant award of damages]. The applicability of the Option AOI is equally relevant to claims staked by UEX but not offered to Orano, such that Orano is not seeking an interpretation of a contractual term that affects obligations solely on it.

[24] I had occasion to visit this topic in *Duraroc Consulting Ltd. v Bert Baxter Transport Ltd.*, 2017 SKQB 351 [*Duraroc*]. The difference there was both parties were petitioning that the Court resolve the debate on the basis of summary judgment. In that case, I opined, starting at paragraph 17:

[17] As noted, the parties petition the court to resolve the liability debate on the basis of the summary judgment procedure under Rule 7-2 of *The Queen's Bench Rules*.

[18] I am in agreement with counsel that the issues before me are sufficiently focussed and the material is sufficiently detailed so that I am able to:

1. make the necessary findings of fact -- all necessary facts have been agreed to by counsel;
2. apply the law to the facts;
3. conclude summary judgment is a proportionate and more expeditious and less expensive means to achieve a just result between the parties; and
4. determine there appears to be no genuine issue requiring a trial.

[19] My agreement with counsel that a summary judgment proceeding under Rule 7-2 is appropriate is consonant with the guidance offered by *Viczko v Choquette*, 2016 SKCA 52, 476 Sask R 273; *Auchstaetter v Evolution Homes Ltd.*, 2016 SKQB 360; *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 SCR 87 and *Tchozewski v Lamontagne*, 2014 SKQB 71, 440 Sask R 34.

[25] In my opinion, the conditions before me are the same as in *Duraroc*, and I am able to resolve the debate by way of summary judgment.

Problems with Affidavits

[26] Both parties complain about procedural errors in the other's affidavit, although only UEX has brought a formal notice of application to strike. There is a kernel of correctness in each of their complaints. However, the record will note it is a rare day

when the King’s Bench sees a perfect affidavit, let alone a perfect affidavit covering a period of more than 20 years.

[27] From UEX’s perspective, the primary complaint is that much of the evidence filed by Orano was hearsay where the deponent did not identify on who he relied on for the averred facts, contrary to the mandate of *The King’s Bench Rules*. The complaint is valid.

[28] Mr. Hodson, on behalf of Orano, replies and asserts that it is clear from the context of the entirety of the file (and the thousands of pages before the Court) that the deponent obtained the information from others within Orano. That is probably correct.

[29] The complaints by Orano against UEX with respect to the evidence filed by UEX are outlined on pages 25 and 26 of its brief. Orano’s complaint is that several of the affidavits are expressing opinion of what the deponent understood or a subjective understanding of the deponent. Again, there is more than a hint of factual grounding in Orano’s complaint.

[30] At the “over the forest” level, I regard none of the objections as serious or creating an argument that will resolve the larger debate. In terms of imperfect affidavits, I hold the parties *in pari delicto*. The applications to strike/ignore are dismissed.

Analysis

[31] Refreshingly, both counsel and the Court agree that in dealing with contractual interpretation, we all must worship at the altar of *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53.

[32] UEX, commencing at paragraph 43 of its brief, outlines its approach and

analytical path to reach the conclusion that the Option AOI is applicable to the joint venture that arises pursuant to section 2.6 of the Option Agreement:

43. The goal of all contractual interpretation is to ascertain *consensus ad idem*, the meeting of the minds, between or among the parties to a contract, which is essential for its formation and enforcement. [*Mosten Investments LP v The Manufacturers Life Insurance Company*, 2021 SKCA 36 at para 66 [*Mosten Investments LP*]; *Boutin v Boutin*, 2023 SKCA 41 at para 32 [*Boutin*]]. As the Supreme Court of Canada held in *Sattva*, the court aims to find the mutual intentions of the parties at the time they entered the contract. [*Mosten Investments LP* at para 68; *Sattva* at para 55].

44. To discern *consensus ad idem*, the court will turn to the text of the contractual provision, read in harmony with the rest of the contract and in light of its purpose and commercial context. [*Sattva* at para 57; *Tercon Contractors Ltd. v British Columbia (Transportation and Highways)*, 2010 SCC 4 [*Tercon*] at para 64].

45. Two other principles of contractual interpretation are important to this analysis. Orano refers to these principles in its Brief, but its interpretation does not comply with them.

46. The first is that the meaning of a contract is *fixed at the time of its formation—it does not come to mean something else over time*. [*Mosten Investments LP* at para 69.] The continued existence of the AOI is a problem for Orano. This is manifest not only through its alleged “mistake” in interpretation from 2014-2019, but also in its arguments on commercial absurdity and the size of the AOI. There is no doubt that the size of AOI was acceptable to the parties at the time of contract formation. It is only now that Orano argues it has, over time, become unacceptable.

47. The second principle is that meaning must be given to all of the words in a contract and that it is an error to subdivide clauses into constituent parts. A clause must be interpreted as a whole. [*Amberber v IBM Canada Ltd.*, 2018 ONCA 571 at para 59]. In its analysis, Orano does not look at the entirety of s. 6.1 of the Option Agreement or the definition of Mineral Disposition.

48. A review of the language of the Option Agreement as a

whole, the specific provisions at issue, and the surrounding circumstances at the time of contract formation, demonstrates that the AOI did not expire with the Option Period.

i. The Option Agreement Read as a Whole

49. At a high level, the Option Agreement contemplates that certain option rights could be exercised by UEX between 2005 and 2015. [Option Agreement at s. 2.1]. Upon the exercise of UEX's option rights, the Option Agreement then became an agreement for the transfer and assignment of the earned interests from Orano to UEX [Option Agreement at s. 2.4] and the parties were to enter into joint venture agreements for each of the projects. [Option Agreement at s. 2.6(a)].

50. The Option Agreement contemplated that there might be a delay between the end of the exercise of the option and the next stage of the parties' commercial relationship: the establishment of joint venture agreements. The Option Agreement provides that until the separate joint venture agreements are executed, the Option Agreement continues to govern the parties' respective rights and obligations and provides default terms regarding the interim joint venture operations. [Option Agreement at s. 2.6(b)].

51. Thus, the Option Agreement contemplates two distinct stages to the parties' relationship and serves dual purposes: it contains provisions governing the option and the joint ventures. The parties agree about this dual purpose.

52. Given its dual purposes and long-term nature, it is not surprising that there is no express term of termination date for the Option Agreement. However, the parties expressly turned their minds to the termination or duration of certain rights and obligations given the distinct stages:

- (a) The Option Period is defined in the Option Agreement as "the period of time from the Effective Date to the exercise, abandonment or termination of the option in accordance with the terms and conditions of this Agreement." [Option Agreement at s. 1.1(j)]. The "Effective Date" is March 5, 2004. [Option Agreement at s. 1.1(f)]. Section 2.4 discusses when the option is deemed to be exercised. The parties agree that UEX exercised its option rights as of December 31, 2007 and the Option Period terminated upon that date.

- (b) Section 2.6(b) of the Option Agreement contains the default terms of the interim joint ventures pending formalization of separate joint venture agreements. The term of rights and obligations of these interim joint ventures was “for so long as both parties have an interest in the Project or until the parties mutually agree to otherwise dissolve or terminate the Joint Venture”. [Option Agreement at s. 2.6(b)(xi)].

53. The Option Agreement also provides specific termination rights to each party related to the entire agreement in ss. 8.1 and 8.2, with the consequence of termination addressed in s. 8.3.

54. For the reasons set out below, there is no express termination date or duration for the AOI as asserted by Orano. The parties’ rights and obligations in the AOI remain in effect during the two distinct stages of the Option Agreement and terminate upon being replaced by rights and obligations regarding the areas of interest negotiated in the separate joint venture agreements or if they abandon the projects.

ii. The Words of the Option Agreement show that the AOI is in force

55. Consideration of the written text of the contract is placed at the core of the interpretive process, as “parties to a contract are presumed to have intended to mean what the text of the contract actually says.” [*Mosten Investments LP* at para 73].

56. The AOI is established in s. 6.1 of the Option Agreement and is reproduced again below:

6.1 Area of Interest

As of the Effective Date but prior to the exercise of the Option, the parties agree to create an area of interest surrounding the Mineral Dispositions, as further described and outlined in Schedule “D” (the “Area of Interest”) to enable the parties to jointly explore the Area of Interest in the manner as generally outlined in Schedule “E”. Accordingly, if at any time after the Effective Date either party acquires ownership, either directly or indirectly, of any mineral disposition within the Area of Interest such additional mineral dispositions will, except as provided in Section 6.2, be subject to the terms and conditions of this Agreement as if it were one of the Mineral Dispositions

hereunder.

57. The ordinary and grammatical meaning of both sentences is clear. Together, the provision establishes the AOI and sets out the rights associated with the AOI.

58. Orano focuses upon a portion of the first sentence: the clause “[a]s of the Effective Date but prior to the exercise of the Option” and the last portion of the sentence: the clause “as further described and outlined in Schedule “D” (the “Area of Interest”) to enable the parties to jointly explore the Area of Interest in the manner as generally outlined in Schedule “E.” It ignores the language of the middle of the sentence which states “the parties agree to create an area of interest surrounding the Mineral Dispositions”. Together, the first sentence establishes the time period to *create* the AOI: after the Effective Date but before the exercise of the option and its purpose. To “create” is to bring something into existence. [*Merriam-Webster’s Collegiate Dictionary*, 11th Ed. (Springfield, MA: Merriam-Webster, Incorporated, 2014) sub verbo “create” at 239]. It denotes the *beginning point*, not the *end point* of something.

59. The second sentence addresses the right of either party to add claims from the AOI. It too contains temporal language: “if at any time after the Effective Date”. There is no deadline or duration in which to exercise those rights. Reference to the “Option Period” or “exercise of the Option” in this sentence is noticeably absent.

60. Section 6.1 of the Option Agreement must be read along with the definition of “Mineral Dispositions”, which states:

(i) “Mineral Disposition” means the claims listed in Schedule “A” to this Agreement and except as provided in Section 6.2, any new mineral dispositions that may be acquired in the Area of Interest by either party which are granted by the governments of Saskatchewan or Alberta **and any mineral claims or other mineral interests in substitution for or replacement of such claims, in whole or in part, obtained by the Owner at any time during the Option Period.** [Emphasis added]

61. This provision is also unambiguous and important language is ignored by Orano. The bolded statement contains *two* distinct types of claims that may be added:

- (a) The first part (underlined) incorporates claims that may be acquired by either party in the AOI.
- (b) The second part (bolded) incorporates any mineral claims or other mineral interests in substitution for or replacement of such claims, in whole or in part.

62. Orano focuses on the last words of the provision “at any time during the Option Period” and ignores the words that preceded it “obtained by the Owner”. The entirety of the expression is “obtained by the Owner at any time during the Option Period”. This expression can only modify the second part of the bolded sentence related to “substituted or replaced claims” because of the reference to “Owner”. Orano is defined as the Owner of the claims listed in Schedule “A” and was the party optioning its interests to UEX.

63. The expression “obtained by the Owner at any time during the Option Period” cannot modify the first part of the underlined sentence because the language already contemplates claims acquired by both parties, not just claims acquired by the “Owner”.

[Emphasis in the UEX brief]

[33] The position advanced by Orano is simpler in concept. As no joint venture agreement could be agreed to by the parties, the joint venture contemplated in clause 2.6 of the Option Agreement becomes the governing contract.

[34] Hence, the “principal terms” referenced in clause 2.6(b) become, by default, the principal terms of the joint venture. In the “principal terms” there is no Option AOI. Orano maintains, starting at paragraph 146 of its brief:

146. Read as a whole, the Option Agreement clearly states that the Option AOI and Exploration Philosophy in Schedule E applied only during the Option Period. If the parties intended to have the Option AOI apply to the joint ventures following the Option Period, the Option Agreement would have expressly stated such, by including it as a Principal Term. It clearly does not.

147. Similarly, if the parties intended to have the Option AOI apply pending the negotiation (or arbitration) of joint

venture agreements, the agreement would have included such a provision in the Agreement. It clearly does not.

148. Instead, the area of interest for the joint ventures was one of many “typical terms” to be negotiated between the parties and included in a formal joint venture agreement, together with the Principal Terms.
149. Within months of the joint ventures being established, the parties exchanged draft joint venture agreements, which included the industry standard 2 kilometres surrounding the Project Area. There was no objection from UEX or Orano to the inclusion of this provision.
150. As a result of the JV Operatorship Dispute, the parties have not agreed to the terms of formal joint venture agreements. Accordingly, the Principal Terms in s. 2.6(b) continue to govern the joint ventures.
151. As noted, the interpretation of a contract requires consideration of the nature and custom of the market and industry in which the contract is executed, and contracts must be interpreted in a commercially sensible manner. [*Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.*, 2016 SCC 37, [2016] 2 SCR, note 136 at para 30 and 106, *Resolute FP Canada Inc. v Ontario (Attorney General)*, 2019 SCC 60, [2019] 4 SCR 349, note 137 at para 142, and *Consolidated Bathurst Export Ltd. v Mutual Boiler & Machinery Insurance Co.*, 1979 CanLII 10, [1980] 1 SCR 888, note 138 at para 26]. Commercial parties are generally understood not to intend to contract for a commercially unreasonable result or terms that grossly depart from industry standards, unless the contract clearly provides otherwise [Geoff N. Hall, *Canadian Contractual Interpretation Law*, 4th ed (Toronto, ON: LexisNexis, 2020), note 129 at 66-67].
152. Any interpretation of the Option Agreement that would result in the Option AOI applying to the joint ventures either in perpetuity, or until formal joint venture agreements are executed would be contrary to the above principles.
153. The unique large area of interest for the Option Period was tied directly to the Exploration Philosophy which applied explicitly to the Option Period and does *not* apply to any

of the joint ventures form at the end of the Option Period. Rather the Principal Terms of the joint ventures limit the scope of the purpose of the joint venture to “*exploration, development and production of minerals from the Project.*”

154. The purpose of an area of interest is to prevent a joint venture partner from using confidential exploration information from the project area to stake claims in mineral areas adjacent to and contiguous with the project area, without providing an opportunity to participate to other joint venture partners.

[Emphasis in the Orano brief]

[35] As to UEX’s argument with respect to the interpretation of “mineral disposition”, Orano replies at paragraphs 161 to 163:

161. At paragraphs 9-10 of its Defence, UEX argues the definition of “Mineral Disposition” in s. 1.1(i) of the Option Agreement confirms that new mineral dispositions acquired in the Option AOI by either party are subject to the terms of the Option Agreement in perpetuity and that it is only “*mineral claims or other mineral interest in substitution of replacement of such claims...obtained by the Owner*” that are bounded by the limitation of “*during the Option Period*” in the definition.

162. The words “*at any time during the Option Period*” qualify the entire definition of “Mineral Disposition”:

(i) “Mineral Disposition” means the claims listed in Schedule “A” to this Agreement and, except as provided in Section 6.2, any new mineral dispositions that may be acquired in the Area of Interest by either party which are granted by the governments of Saskatchewan or Alberta and any mineral claims or other mineral interests in substitution for or replacement of such claims, in whole or in part, obtained by Owner **at any time during the Option Period**. [Emphasis added].

163. UEX’s interpretation is illogical, as it leads to the result that a mineral disposition granted by the government after the expiry of the Option Period would be subject to the Option AOI, while a mineral disposition subsequently

substituted for or replacing such a claim is not.

[Emphasis in the Orano brief]

Subsequent Conduct of Orano

[36] UEX complains that Orano ignores the fact that the parties' conduct between 2014 and June 2022 was intentional, unequivocal, and consistent with both of them acknowledging that the Option AOI was in effect. Orano replies that simply because some of its officers made an error in interpreting the contract does not, in fact, or in law, change a clause that has expired to a clause that is operable.

[37] On this point, I am inclined to agree with Orano. In my view, it is not the law that one party to a contract, having made an error or believing it has made an error in interpretation, is precluded from changing its mind and arguing a different interpretation. This is why courts are created.

Equitable Defences

[38] Starting at paragraph 114 of its brief, UEX asserts that Orano's claim is barred by equitable defences:

114. In the alternative, in the event that this Honourable Court finds that Orano's interpretation of the AOI is correct, UEX submits that Orano's claim for declaratory relief is barred by the doctrines of estoppel, laches, acquiescence, and waiver.

115. As set out in detail above, Orano did not assert that the AOI provisions were not in force until 2020. Thus, for a period of approximately 16 years, Orano relied upon the terms of the AOI, offering staked areas to UEX and accepting UEX's offers of staked claims within the AOI.

116. Three doctrines of estoppel are engaged: estoppel by election, estoppel by convention, and estoppel by representation.

117. Estoppel by election requires the following steps:

- (a) Party A has two alternative and inconsistent courses of action in relation to a contract;
- (b) Party A makes an election as to which course of action to follow;
- (c) Party A then conducts itself to cause Party B to believe it has elected one course of action and rejected the alternative and inconsistent course of action;
- (d) As a result, Party A is estopped from subsequently adopting the rejected course of action. [*ADAG Corporation Canada Ltd. v SaskEnergy Incorporated*, 2021 SKCA 74, leave to appeal refused 2022 CanLII 1938 (SCC) at para 21].

[39] Orano is dismissive of the argument from UEX. It asserts UEX misses the first step, namely, there is no contract between UEX and Orano. Orano outlines, starting at paragraph 181 of its brief:

- 181. In paragraph 22, UEX pleads “laches, acquiescence and estoppel and states that Orano is precluded from asserting that the rights and obligations of Orano and UEX in respect of the Area of Interest as described in section 6 of the Option Agreement are no longer in effect.”
- 182. In paragraph 23, UEX pleads “Orano is estopped from now asserting that the Area of Interest has expired” and in paragraph 24, UEX pleads in the alternative that “Orano has waived its right to assert that the Area of Interest is not in effect.”
- 183. Orano is not asserting any rights nor is it seeking to impose any obligations on UEX in respect of the Option AOI. Rather, it is UEX that has improperly sought to impose obligations on Orano and UEX in respect of the expired Option AOI.
- 184. Orano is simply seeking a declaration from the Court that, upon a proper interpretation of the Option Agreement, the Option AOI no longer applied after the expiry of the Option Period.

185. If the Court interprets the Option Agreement in that manner, which Orano submits it should, it is not clear how, and on what legal basis, UEX can rely on “laches, acquiescence and estoppel” or “waiver” to somehow rewrite the Option Agreement and re-impose an obligation on Orano (and UEX) that was and is no longer in effect following the expiry of the Option Period [The maxim that equity can only be used as a shield and not as a sword applies equally to defendants attempting to utilize equity to acquire rights (see *Smoky River Coal Ltd. v U.S.W.A., Local 7621*, 1985 ABCA 146 at para 9, 18 DLR (4th) 742 wherein the Court noted that the availability of estoppel is not “to be decided by the happenstance of who sues whom”). In *Pruder v Big Island Quarries Inc.*, 2017 ONSC 2714 at para 84 Justice Tzimas rejected a defendant-tenant’s equitable claim for relief from forfeiture on the basis that it would provide it would amount to a “sword” providing it with rights it did not have].
186. UEX’s defence is based on Orano mistakenly agreeing to offer and accept interests in claims staked in the Option AOI starting in August 2014 and ending in 2019. It is not clear how, and on what legal basis, the Court can “revive” the expired Option AOI and make it a term of the joint ventures from and after that date.
187. UEX’s request for this extraordinary form of equitable relief is all the more troublesome since UEX itself did not comply with the Option AOI in 2023, [Orano’s Read-Ins at Tab 4] but now seeks to impose the Option AOI on Orano in perpetuity, unless, of course, Orano agrees to provide concessions to UEX on the Shea Creak and other joint ventures.
188. UEX bears both the evidentiary and legal burden to prove its equitable defences. It has failed to establish a proper evidentiary foundation for its claim for equitable relief. Nor is there any legal basis to support UEX’s position.

[40] Respectfully, I am in agreement with the analysis of Orano respecting the equitable defences.

Conclusion

[41] Notwithstanding the excellent arguments advanced by counsel for UEX, I am persuaded that the analysis of Orano is the one that is determinative of the issues in this debate.

[42] The plain language of the Option Agreement takes me to this conclusion. Clause 6.1 of the Option Agreement expressly states that the Option AOI applies during the Option Period. The Option Period expired on December 31, 2007, when UEX exercised its option.

[43] Both parties contemplated that joint ventures would thereafter be entered into for the project(s). The Option Agreement specifically provided that until a formal joint venture agreement is reached, the “principal terms” will govern the interim joint venture. The principal terms contain no Option AOI.

[44] Accordingly, I declare that the rights and obligations of Orano and UEX under section 6 of the Option Agreement dated November 10, 2004 expired on December 31, 2007, and it follows that any mineral disposition to be acquired by Orano in the area of interest subsequent to that is not subject to the Option Agreement.

[45] I respectfully invite the parties to see if they can work out as between themselves costs that are appropriate for this application. In the event they cannot, they can contact the Local Registrar and we will convene by telephone to debate.

J.
R.S. SMITH