

Court of King's Bench of Alberta

Citation: McElgunn v Vermilion Energy Inc, 2026 ABKB 188

Date: 20260312
Docket: 2501 12167
Registry: Calgary

Between:

Julia M. McElgunn

Appellant

- and -

Vermilion Energy Inc.

Respondent

**Reasons for Decision
of the
Honourable Justice C.D. Simard**

I. Introduction

A. Overview

[1] On August 24, 2022 Vermilion Energy Inc. (**Vermilion** or the **Respondent**) terminated Julia McElgunn's (**Ms. McElgunn** or the **Appellant**) employment, without cause or reasonable notice. At the time, she was a Senior Geological Advisor and had worked at Vermilion for about nine years. Ms. McElgunn sued Vermilion for damages. The parties agreed to arbitrate that dispute, so they entered into an arbitration agreement pursuant to the *Arbitration Act*, RSA 2000, c. A-43 (the *Act*). They appointed Jim McCartney as their arbitrator (the **Arbitrator**). On July 31, 2024, he issued a partial award (the **Award**).

[2] Ms. McElgunn has appealed only one part of the Award: the Arbitrator's decision that she was not entitled to any damages in lieu of receiving certain grants of shares under the Vermilion Incentive Plan (**VIP**).

B. The Award

[3] I will first summarize the portions of the Award that provide the necessary context for this appeal.

[4] The Arbitrator found that Ms. McElgunn was entitled to 10 months' notice. By failing to provide her with that prior notice of termination, had Vermilion breached an implied term of her employment contract (the **Employment Contract**). She was accordingly entitled to damages compensating her for the compensation she would have received during that 10-month notice period, from her August 24, 2022 termination date, to June 24, 2023.

[5] Vermilion's VIP was a program for employees like Ms. McElgunn that provided them with shares in the company, as a form of bonus.

[6] Under the VIP, Ms. McElgunn had received a grant of 7,053 Vermilion shares that would vest on April 1, 2023 (the **April 2023 Share Award**). This grant was pursuant to a Share Award Agreement dated July 23, 2020 (the **2020 SAA**). The April 1, 2023 vesting date fell within Ms. McElgunn's 10-month notice period, so the Arbitrator had to decide whether she was entitled to receive the April 2023 Share Award, or damages in lieu of receiving the actual shares.

[7] To decide this issue, the Arbitrator referenced the test set out by the Supreme Court of Canada in *Matthews v Ocean Nutrition Limited*, 2020 SCC 26, which properly applies to this type of situation. That test requires a decision-maker to answer two questions:

- (a) but for the termination, would the employee have been entitled to the bonus during the reasonable notice period; and
- (b) if so, does the wording of the relevant agreement or plan unambiguously alter or remove that entitlement?

[8] The Arbitrator answered the first question affirmatively: he concluded that, but for the termination, Ms. McElgunn would have been entitled to receive the April 2023 Share Award. Neither party disputes that finding. It is clear that the vesting date for the April 2023 Share Award fell within Ms. McElgunn's 10-month notice period.

[9] To answer the second question, the Arbitrator first had to decide which contractual terms governed. He found that when Ms. McElgunn started working at Vermilion and entered into the Employment Contract, she was provided with a copy of the VIP that was in effect at that time (the **2012 VIP**). The 2012 VIP included the following terms, among others:

- Vermilion's board of directors (the **Board**) had the power to amend the VIP (the **Board Amendment Provision**), including to change its early termination provisions; and
- each Share Award would be subject to the terms of the VIP and evidenced by a written Share Award Agreement (**SAA**).

[10] The Arbitrator concluded that Ms. McElgunn had agreed to be bound by these terms in the 2012 VIP when she entered into her Employment Contract in 2012. He also found that, had the 2012 VIP still been in force when she was terminated, its early termination provision would not have disentitled her from the April 2023 Share Award. However, the VIP was changed in

2020 (the **2020 VIP**). The 2020 VIP was the most current version of Vermilion’s VIP approved by the Board, when Vermilion terminated Ms. McElgunn. The Arbitrator found that Ms. McElgunn was bound by the 2020 VIP, because she had agreed to the Board Amendment Provision in her Employment Contract. He found that Vermilion did not need to provide her with any fresh consideration when its Board changed the VIP, because she had already agreed that Vermilion’s Board had the authority to alter the 2012 VIP.

[11] The Arbitrator then went on to interpret the 2020 VIP. He found that the early termination provision in the 2020 VIP (the **2020 Early Termination Provision**, which I will set out and discuss in detail below in the Analysis section of this Decision) had the effect of disentitling Ms. McElgunn to the April 2023 Share Award.

C. The Leave Decision

[12] Under the section 44(2) of the *Act*, which applies here, the parties could only appeal the Award on a question of law, and with leave of the Court. On July 3, 2025, Magnan J of this Court granted Ms. McElgunn’s application for leave to appeal on two issues:

- (a) did the Arbitrator breach procedural fairness by relying on the Board Amendment Provision despite it not being expressly pleaded or referred to by Vermilion; and
- (b) did the Arbitrator err in law in applying part two of the *Matthews* test?

II. Issues

[13] The issues I have to decide in this appeal are the two issues on which Magnan J granted leave to appeal, set out in the immediately preceding paragraph.

III. Analysis

[14] For the reasons that follow, I have concluded that:

- (a) the Arbitrator did not violate the rules of procedural fairness by relying on the Board Amendment Provision to conclude that the 2020 Early Termination Provision was binding on the parties; but
- (b) the Arbitrator did err in law by misapplying part two of the *Matthews* test.

A. What is the Applicable Standard of Review?

[15] This is an appeal under section 44(2) of the *Act*. That provision only permits appeals with leave of the Court, and only on questions of law. The two issues on which Magnan J granted Ms. McElgunn leave to appeal are questions of law, to which the “correctness” standard of review applies: *Esfahani v Samimi*, 2022 ABKB 795 at paras 85, 94, 95.

B. Did the Arbitrator breach procedural fairness by relying on the Board Amendment Provision despite it not being expressly pleaded or referred to by Vermilion?

[16] The portion of the Award in which the Arbitrator decided that the 2020 VIP Early Termination Provision bound Ms. McElgunn, in reliance on the Board Amendment Provision, is at paras 59 - 83 and 94.

1. The Parties' Positions

[17] In the arbitration, Ms. McElgunn argued that the 2020 Early Termination Provision constituted a fundamental change in the terms of her Employment Contract. Therefore, to be enforceable, Vermilion would have had to present it to her, she would have had to unambiguously consent to it, and Vermilion would have had to provide her with fresh consideration. As I have noted above, the Arbitrator found that the Amendment Provision in the 2012 VIP was incorporated into Ms. McElgunn's Employment Contract, with the result that Vermilion did not have to provide her with fresh consideration for the 2020 Early Termination Provision to become binding on her.

[18] Ms. McElgunn says that the manner in which the Arbitrator made this decision was a violation of procedural fairness, because Vermilion had not expressly relied on the Amendment Provision in the arbitration. She says that if she knew the Arbitrator would be relying on the Board Amendment Provision, she might have made additional, or different, submissions in the arbitration. However, she was unfairly denied that opportunity.

[19] Vermilion says there was no procedural unfairness. The parties had put a full factual record before the Arbitrator, including the 2012 VIP and the 2020 SSA. In their submissions to the Arbitrator, both parties had argued about whether the 2020 Early Termination Provision bound Ms. McElgunn, and acknowledged that this clause was a change to the 2012 VIP, by way of amendment. Therefore, Vermilion says, the issue of the validity of the amendments to the VIP was not a surprise issue, and the Arbitrator was entitled to read the entire record that the parties had put before him, to decide that issue.

2. The Applicable Law

[20] In *Esfahani* at paras 110 – 155, Marion J extensively discussed how procedural fairness applies in arbitrations. From his comments, I summarize the principles that are most relevant in this case:

- natural justice requirements in arbitration have been broadly stated to require the arbitrator to act in good faith (or, stated otherwise, to be unbiased), fairly listen to both sides, and to give a fair opportunity to the parties to make representations, including to correct or to contradict any relevant statement prejudicial to their view;
- however, the idea of compromising some level of procedural fairness in exchange for increased efficiency and finality of resolution through arbitration is well-established, for example in the following ways:
 - parties to an arbitration are entitled to a fair hearing, not a perfect hearing; and
 - the overall fairness of the proceedings must be considered, not individual rulings; and
- accordingly, courts should only intervene in cases of the most egregious procedural breaches — the arbitrator's conduct must be sufficiently egregious to offend basic notions of morality and justice.

3. Applying the Law to the Facts

[21] I find that Ms. McElgunn's right to a procedurally fair arbitration was not breached. It was not unfair for the Arbitrator to take notice of and rely on the Board Amendment Provision in making the Award. Ms. McElgunn had a fair opportunity to fully make her case. I reach this conclusion for the following reasons.

[22] First, the issue of Vermilion's authority to make the 2020 Early Termination Provision binding on Ms. McElgunn was front and center in the parties' pleadings and in the materials they submitted in the arbitration. The parties placed all the relevant contract and VIP documents before the Arbitrator. It is trite law that decision makers are required to interpret contractual provisions in the context of the entire contract. The parties would have reasonably expected that the Arbitrator would review the entire record, including all the provisions in the contracts and VIP documents.

[23] Second, the fact that Ms. McElgunn herself relied on documents that referenced and turn contained the Amendment Provision, was incontrovertible. She asserted that her Employment Contract was the governing agreement between the parties. The Employment Contract expressly stated that her Share Awards would be subject to the terms of the VIP. At the time she accepted the Employment Contract, that was the 2012 VIP, which included the Amendment Provision.

[24] Third, even if I am wrong in concluding that the Arbitrator did not make an error of procedural fairness, that error could not have prejudiced the Appellant. That is because the alleged procedural fairness error was merely the pathway that the Arbitrator chose, to arrive at the (mixed factual/legal) conclusion that the 2020 VIP bound Ms. McElgunn. As Ms. McElgunn has acknowledged (at para 14 of her December 12, 2025 Brief of Argument), she did not appeal that conclusion. Further, in my view, that conclusion was incontestably correct.

[25] Each year, to obtain a Share Award, Ms. McElgunn had to positively agree to the terms of a new SAA. This was a requirement that the 2012 VIP clearly set out at the time she was hired, and it was a requirement that she complied with every year. To obtain her 2020 Share Award, as in all prior years, Ms. McElgunn visited a "Shareworks" website, on which she positively clicked on an "accept and acknowledge" button. On July 23, 2020, she followed that process to positively accept the 2020 SAA, which included the following terms, among others:

- (a) her acknowledgment that she had received a copy of the 2020 VIP (which contained the 2020 Early Termination Provision);
- (b) her agreement that her 2020 Share Award was subject to the terms of the 2020 VIP; and
- (c) a link to the 2020 VIP.

[26] In summary, there was simply no way for Ms. McElgunn to receive her 2020 Share Award without entering into the 2020 SAA and accepting all its terms, including her agreement that the 2020 VIP (including the 2020 Early Termination Provision) was incorporated by reference into the 2020 SAA. Even if the Arbitrator followed an unfair procedure to reach the conclusion that Ms. McElgunn was bound by the 2020 Early Termination Provision (which I have decided he did not), that conclusion was correct and is unappealable.

[27] For the foregoing reasons, there was no procedural unfairness, so the Appellant's first ground of appeal is dismissed.

C. Did the Arbitrator Err in Applying Part Two of the *Matthews* Test?

[28] The Arbitrator’s discussion and application of part two of the *Matthews* test is found at paras 84 – 93. In those paragraphs, he considered whether the 2020 Early Termination Provision disentitled Ms. McElgunn to the April 2023 Share Award. He concluded that it did.

1. The Applicable Law

[29] The parties agree that *Matthews* sets out the legal framework that the Arbitrator was required to apply. Therefore, it is useful to start my analysis with a summary of that framework. The Supreme Court set out the following principles (at paras 43 – 67) in *Matthews*:

- employers have a common law right to terminate employment contracts without cause, subject to an implied term in the contract to provide reasonable notice of the termination;
- when an employer terminates without providing reasonable notice, they breach this implied term of the employment contract;
- if that happens, the employee is entitled to an award of damages based on the period of notice which should have been given, with the damages representing what the employee would have earned during the notice period. Another way of saying this is that when employees sue for damages for wrongful dismissal, they are claiming damages as compensation for the income, benefits, and bonuses they would have received had the employer not breached the implied term to provide reasonable notice of termination, and had they continued working during that notice period;
- thus, the employment contract effectively “remains alive” for the purposes of assessing the employee’s damages, in order to determine what compensation the employee would have been entitled to, but for the dismissal;
- to determine whether the compensation that the employee would have earned during the notice period includes particular bonuses or benefits, courts should employ a two-step approach, asking:
 - but for the termination, would the employee have been entitled to the bonus or benefit as part of their compensation during the reasonable notice period; and
 - if so, do the terms of the employment contract or bonus plan unambiguously take away or limit that common law right?
- if the relevant contract or bonus plan is a “unilateral contract,” in the sense that the parties did not negotiate its terms, the principle of contractual interpretation requiring clauses excluding or limiting liability to be strictly construed “applies with particular force”; and
- the exclusion provisions in the agreement or plan must “clearly cover the exact circumstances which have arisen” and must be “absolutely clear and unambiguous”.

[30] Examples of exclusionary language in *Matthews* that the Supreme Court found to not reach the requisite level of “absolutely clear and unambiguous” were:

- (a) a clause disentitling Mr. Matthews to his bonus entitlement, unless on the relevant date he was a “full-time employee”; and

- (b) a clause disentitling him regardless of whether he “resigns or is terminated, with or without cause”.

2. The Parties’ Positions

[31] As I noted above, the parties agree that the Arbitrator correctly applied step one of the *Matthews* test. Neither of them contest his finding (at para 48 of the Award) that, but for her wrongful termination, Ms. McElgunn would have been entitled to the April 2023 Share Award as part of her compensation during the reasonable notice period of her termination.

[32] The parties disagree about whether the Arbitrator correctly carried out step two of the test – deciding that the 2020 Early Termination Provision disentitled Ms. McElgunn to the April 2023 Share Award.

[33] To understand the parties’ positions and to conduct my analysis of the alleged error, it is necessary to set out the relevant provisions from the 2020 VIP.

[34] The 2020 Early Termination Provision read as follows:

If a Grantee ceases to be a Service Provider as a result of being terminated other than a termination for cause, effective on the date that is 90 days after the Date of Termination and notwithstanding any other severance entitlements or entitlement to notice or compensation in lieu thereof, all outstanding Award Agreements and all unvested Share Awards (whether in whole or in part) credited to a Grantee's Share Award Account shall be terminated and all rights to receive a payment from the Corporation thereunder (whether in cash or Common Shares or any combination thereof) shall be forfeited by the Grantee, and the Grantee shall not be entitled to receive any payment (whether in cash or Common Shares or any combination thereof) or any other compensation in lieu thereof. For clarity, during the 90 day period following the Date of Termination and any notice period thereafter (whether actual or compensated in lieu thereof) the Grantee shall not be entitled to pro-rated vesting of any Share Awards or any other payment or compensation in lieu thereof.

[35] The 2020 VIP defined the phrase “Date of Termination,” which is used in the 2020 Early Termination Provision, as follows:

“Date of Termination” in respect of a Service Provider means the actual date the Service Provider ceases to provide services to the Corporation, regardless of the reason for the cessation of services;

[36] The Appellant says that the Arbitrator misapplied part two of the *Matthews* test when he interpreted the Amended Early Termination Provision because, in summary:

- (a) in his interpretation of the 2020 Early Termination Provision, the Arbitrator used language from and referred to the cases setting out general contract interpretation principles (for example in paras 41, 42, 90 and 95 of the Award), rather than the more specific rules applicable to interpreting employment contracts (including the guidance provided in *Matthews* itself);
- (b) he failed to appreciate that the 2020 Early Termination Provision does not meet the “clear and unambiguous” standard required by part two of the *Matthews* test, because it does not expressly state that an employee waives their right to claim

damages after a **wrongful** termination. This is evident, Ms. McElgunn says, from para 91 of the Award, in which the Arbitrator found that wording in the 2020 Early Termination Provision was “broad enough” to include damages for breach of the implied requirement for reasonable notice, rather than finding that it “clearly and unambiguously” disentitled Ms. McElgunn of that claim;

- (c) he failed to find that even if the 2020 Early Termination Provision cancelled Ms. McElgunn’s right to receive any Share Award 90 days after she was terminated on August 24, 2022, it did not clearly and unambiguously remove her right to claim damages in lieu of receiving any such Share Award;
- (d) the 2020 Early Termination Provision can be read as only disentitling Ms. McElgunn to Share Awards that vest after a 90-day period following the end of her reasonable notice period; and
- (e) he failed to appreciate the principles that wrongful termination damages flow from the employer’s breach of its obligation to give reasonable notice and that the employment contract effectively “stays alive” during the notice period. She says this is apparent from para 93 of the Award, where the Arbitrator stated:

Whether or not Ms. McElgunn continued to work at Vermilion during the reasonable notice period, [the 2020 Early Termination Provision] would have disentitled her to any share awards or the vesting of any unvested shares.

[37] Vermilion argues that the Arbitrator did not err in applying part two of the *Matthews* test because, in summary:

- (a) the Arbitrator’s references to the general rules of contract interpretation do not constitute an error because when the Award is read as a whole, it is apparent that he understood the *Matthews* test and correctly applied it;
- (b) the 2020 Early Termination Provision covers Ms. McElgunn’s situation and clearly and unambiguously disentitles her to the April 2023 Share Award. The Date of Termination, with its reference to “the actual date the Service Provider ceases to provide services” clearly means the date of wrongful termination without providing reasonable notice; in Ms. McElgunn’s case, August 24, 2022. Vermilion says this is apparent from the wording “during the 90 day period following the Date of Termination **and any notice period thereafter (whether actual or compensated in lieu thereof)**” [emphasis added]. Vermilion says that notice period could only follow the Date of Termination in the case of a wrongful, without notice termination, and that when these words are considered, the language targets the exact damages that Ms. McElgunn seeks;
- (c) the absence of the words “wrongful termination” is not fatal, and *Matthews* does not stand for the proposition that exclusion clauses must invoke certain formulaic language to be effective; and
- (d) para 93 of the Award is fully consistent with part two of the *Matthews* test.

3. Applying the Law to the Facts

[38] Part two of the *Matthews* test required the Arbitrator to decide whether the 2020 Early Termination Provision:

- (a) “clearly covered the exact circumstances” of this case, namely:
 - (i) Ms. McElgunn was terminated without cause and without reasonable notice on August 24, 2022;
 - (ii) Vermilion breached an implied term of her Employment Contract by failing to give her 10 months’ notice of this termination;
 - (iii) her Employment Contract therefore effectively “remained alive” until June 24, 2023, for the purposes of assessing the damages she had suffered as a result of Vermilion’s breach; and
 - (iv) pursuant to the 2020 SAA, Vermilion was obligated to grant Ms. McElgunn 7,053 Vermilion shares on April 1, 2023, which fell within this reasonable notice period; and
- (b) “absolutely clearly and unambiguously” remove Ms. McElgunn’s entitlement to the April 2023 Share Award?

[39] Because the Early Termination Provision is a “unilateral contract” that Vermilion and Ms. McElgunn did not negotiate, the Arbitrator was required to construe the 2020 Early Termination Provision strictly, and apply that principle “with particular force.”

[40] For the following reasons, I find that, on a proper application of the very stringent standard required by *Matthews*, the 2020 Early Termination Provision did not “clearly cover” Ms. McElgunn’s “exact circumstances” and did not “absolutely clearly and unambiguously” disentitle her to the April 2023 Share Award.

[41] The “actual date [Ms. McElgunn] ceased to provide services” to Vermilion (the phrase that is used in the defined term “Date of Termination”) is not clear. It could refer to August 24, 2022, the day on which she was wrongfully terminated. However, it could also refer to June 22, 2023, because as stated by *Matthews*, her Employment Contract effectively remained alive until June 24, 2023, for purposes of determining her compensation entitlements. The words “actual” and “ceased to provide services regardless of the reason for the cessation of services” do not indicate “absolutely clearly and unambiguously” which of the two dates is intended.

[42] Vermilion is a sophisticated party, and if it wished to clearly ensure that the 2020 Early Termination Provision removed someone like Ms. McElgunn’s rights to Share Awards that would vest during her common law reasonable notice period after a wrongful without-cause termination, it was capable of using far more precise words. It could have specifically referred to events like “the date on which an employee is given notice of termination without cause, and before the expiry of any required reasonable notice period but which was not provided to the employee.”

[43] Presumably, in drafting the defined term “Date of Termination”, Vermilion was motivated by a desire to try to draft a provision that covered a number of different termination situations (as evidenced by the words “regardless of the reason for the cessation of services”). However, by doing that, Vermilion used words that introduce a level of vagueness and thereby

fail to clearly and unambiguously address the specific situation that applies when an employee is terminated without cause and without reasonable notice. The general words that Vermilion used do not clearly and unambiguously address what happens *vis-à-vis* the reasonable notice period for an employee like Ms. McElgunn, during which her Employment Contract effectively remained alive.

[44] While the application of *Matthews* is necessarily very fact-specific, I find that the reasoning employed by Eamon J at paras 119 – 122 of *Schaufert v Calgary Co-Operative Association Limited*, 2021 ABQB 579 and paras 65 and 66 of *Matthews* is also applicable here. If anything, those cases used clearer language than is present in the 2020 Early Termination Provision. The courts there found that the “absolutely clear and unambiguous” standard was not met.

[45] Vermilion has referred me to other cases in which this Court concluded that the agreements or plans did meet the “absolutely clearly and unambiguously” standard required by *Matthews*. I have reviewed those cases, but I find them to be factually distinguishable. In both *Kosteckyj v Paramount Resources Ltd*, 2021 ABQB 225 and *Hunsley v Canadian Energy Services LP*, 2020 ABQB 724, the relevant agreement or plan contained much clearer language, that very specifically disentitled wrongfully terminated employees, as compared to the relevant language in this case.

[46] My conclusion that the Early Termination Provision did not absolutely clearly and unambiguously disentitle Ms. McElgunn to the April 2023 Share Award is strongly reinforced by the following wording that appears at the end of the Early Termination Provision, and which Vermilion highlighted in its submissions:

For clarity, during the 90 day period following the Date of Termination and any notice period thereafter (whether actual or compensated in lieu thereof) the Grantee shall not be entitled to pro-rated vesting of any Share Awards or any other payment or compensation in lieu thereof.

[47] This clause is open to at least these two interpretations (but possibly others as well):

- (a) the 90 day time period follows the “Date of Termination” and it also follows “any notice period thereafter (whether actual or compensated in lieu thereof).” In other words the sequence is: (Date of Termination) + (a common law reasonable notice period) + (90 days); or
- (b) the referenced 90 day time period follows the “Date of Termination” but then a “notice period thereafter (whether actual or compensated in lieu thereof)” comes after the 90 day time period. In other words the sequence is: (Date of Termination) + (90 days) + (a common law reasonable notice period).

[48] Thus, contrary to the opening words (“For clarity”), this clause does not add clarity. Even accepting Vermilion’s argument that the Date of Termination is the day a without-cause wrongfully terminated employee receives their notice of termination, this clause adds substantial confusion. Either interpretation (a) or (b) suggests that an employee’s disentitlement from Share Awards only takes effect after two consecutive time periods which follow the date on which notice of termination is given: a 90 day period and a separate common law reasonable notice period. If all rights to Share Awards end 90 days after the date that notice of termination is given, as Vermilion contends, why are the 90 day period and the reasonable notice period set out in the same sentence as consecutive equivalents?

[49] Again, had Vermilion intended to clearly and unambiguously remove Share Awards that would vest during a wrongfully terminated employee's common-law reasonable notice period, and to do so 90 days after Vermilion delivered notice of termination to that employee, it could have drafted this clause much more precisely.

[50] During oral argument, I asked Vermilion's counsel about the vagueness that I perceived in this clause, and specifically whether it suggested that an employee's Share Award rights would terminate only after: (a without cause wrongful termination) + (90 days) + (a common law reasonable notice period). Her response suggested that the clause simply clarified that a terminated employee lost all Share Award vesting that occurred **either** during a 90-day period after a Date of Termination **or** during a common law reasonable notice period after a Date of Termination, and that those two time periods could run concurrently. If that is what Vermilion intended this clause to suggest, it could have drafted it much more precisely. The words "and" and "thereafter" strongly suggest that those two time periods run consecutively, not concurrently.

[51] For the sake of completeness, I will address Ms. McElgunn's additional arguments.

[52] I find that the Arbitrator correctly identified part two of the *Matthews* test, and that he understood it and applied it. This is clear from the statements in paras 40, 48, 58, and 84 of the Award, and notwithstanding his statements potentially suggesting otherwise, in paras 41, 42, 90 and 95. I just differ with the Arbitrator, respectfully, by concluding that the wording in the Early Termination Provision did not meet the very stringent "absolutely clearly and unambiguously" standard.

[53] I agree with the Appellant that the Arbitrator's statement in paragraph 93 of the Award is inconsistent with his finding that Ms. McElgunn's Date of Termination under the Early Termination Clause was August 24, 2022, and that she was divested of the April 2023 Share Award 90 days later. However, given my overall conclusion on the second issue under appeal, it is unnecessary for me to delve any further into the Arbitrator's rationale for making this statement, or its impact on his Award.

[54] For the foregoing reasons, I find that the Arbitrator erred on the correctness standard in his application of part two of the *Matthews* test, and Ms. McElgunn's second ground of appeal is allowed.

IV. Conclusion

[55] The Appeal is allowed. Pursuant to section 44(5) of the *Act*, I vary the Award to include a direction that Vermilion must pay damages to Ms. McElgunn to compensate her for the April 2023 Share Award that she did not receive.

[56] Ms. McElgunn submitted that because I have the entire arbitration record before me, in the event that I allowed her appeal, I should not remit this matter back to the Arbitrator to quantify her additional damages, but should do that myself. I agree it is most efficient if I do that. Only questions of law were appealed, and the Arbitrator's findings of fact are not challenged.

[57] I direct the parties to attempt to agree on the costs of this appeal, and on the quantum of the additional damages that Vermilion must pay to Ms. McElgunn as a result of my decision. If they are unable to do so in the next 30 days, they can contact my assistant to set up a meeting to discuss the necessary next steps for the resolution of those two issues.

Heard on the 23rd day of January, 2026.

Dated at the City of Calgary, Alberta this 12th day of March, 2026.

C.D. Simard
J.C.K.B.A.

Appearances:

Robert J. Stack
for the Appellant

Heather Treacy KC
for the Respondent