Court of King's Bench of Alberta

Citation: MEG ENERGY CORP v ALBERTA (MINISTER OF ENERGY), 2025ABKB479

Date: 20250815
Docket: 2201 14641
2201 14646
Registry: Calgary

Between:

MEG ENERGY CORP

APPLICANT

- and -

ALBERTA (MINISTRY OF TREASURY BOARD AND FINANCE) and **ALBERTA (MINISTER OF ENERGY)**

RESPONDENTS

Costs Endorsement
of the
Honourable Justice James T Eamon

I Introduction

[1] MEG challenged, in a judicial review, the audit determinations of the amount of royalties owing to the Crown on oil sands product from MEG's Christina Lake Oil Sands Project for the years 2014 and 2015.

[2] I issued reasons in ***MEG ENERGY CORP v ALBERTA (MINISTER OF ENERGY)***, 2024 ABKB 592, where I dismissed all of MEG's challenges to the determinations, apart from the rejection of the cost of certain diluent tanks. I referred the latter issue back for redetermination.

[3] Alberta seeks costs of the judicial review. MEG responds that each party should bear its own costs, and alternatively if the Court awards costs they should be split between the parties and assessed at a lesser amount than Alberta's quantification.

II Background

[4] The background is set out in my reasons on the judicial review (the "**Reasons**"). The following summary provides a few details of the context necessary to explain my costs decision; the fact I haven't provided greater specificity does not mean I did not consider the additional context set out in my Reasons.

[5] Under the oil sands royalty regime, the royalties owing by MEG to the Crown are assessed on a revenue minus cost approach. The producer must prepare statements of its revenues, costs and royalties payable to the Crown. The Government of Alberta acting through the Minister of Energy and Minerals may audit the royalty statements. A group of auditors in the Government of Alberta, known as Alberta Energy Audit ("**AEA**") perform this function under delegated authority of the Minister. The Minister may review the determinations in the event of an objection by the producer to AEA's determinations and has delegated his authority to a director of dispute resolution (the "**Director**"). The Court may judicially review the determinations.

[6] The eligibility of costs to be deducted and the manner of quantifying such costs are governed by the *Mines and Minerals Act*, RSA 2000, c M-17 ("***MMA***") and detailed regulations thereunder, primarily the *Oil Sands Allowed Costs (Ministerial) Regulation*, Alta Reg 231/2008 ("***ACR***") and the *Oil Sands Royalty Regulation, 2009*, Alta Reg 223/2008 ("***OSRR2009***").

[7] AEA audited MEG's 2014 and 2015 statements and refused or adjusted certain costs. The Director rejected MEG's objections in a review proceeding. MEG sought judicial review of the AEA's and the Director's determinations.

[8] MEG owned and operated the Access Pipeline and adjacent Stonefell Terminal during the periods under review. The pipeline system moved MEG's oil sands product southbound from MEG's Christina Lake Oil Sands Project to hubs near Edmonton and moved diluent northbound from the Edmonton area to the project site. The costs determinations related to costs in relation to the terminal.

[9] Under the applicable regulations, costs can be quantified in a "cost of service" calculation or on a fair market value basis. The applicable method depends on the factual circumstances. MEG initially quantified the costs of Stonefell Terminal's services in a cost of service calculation, rather than by assessing the fair market value of the services. Later, it asserted that fair market value be used.

[10] A number of disputes arose over calculating the costs of the terminal services – both quantum and eligibility for deduction.

[11] To make the cost of service calculation you need to input a rate of return on capital. Two rates are available for assets off the oil sands project site. One applies to "non-basic pipelines" and is preferential in favour of the operator of the oil sands project. The other applies to assets other than non-basic pipelines and is a lower rate.

[12] MEG said the Stonefell Terminal was part of a non-basic pipeline under Alberta law and the preferential rate applies. AEA decided that the Stonefell Terminal is not a "pipeline" under the Alberta royalty regime and applied the lower rate. The Director agreed with AEA's conclusion.

[13] Further, MEG challenged whether the cost of service approach to assessing the costs of the terminal service applied at all. Although MEG initially submitted its royalty reports based on a cost of service calculation, it eventually advocated for a determination of a fair market value for the services.

[14] The AEA decided that fair market value for the services could not reasonably be determined and a cost of service approach should be used. The Director agreed with AEA's conclusion.

[15] There was a further dispute whether some terminal services were eligible for deduction in the royalty calculation. Two tanks at Stonefell terminal were used to hold diluent (in contrast to tanks used to hold MEG's oil sands product which was a blend of heavy oil and diluent).

[16] The AEA disallowed the costs of the Diluent Tanks. The Director agreed with AEA's conclusion.

III Grounds of judicial review

[17] MEG challenged the substantive decisions about eligibility and quantification of the costs on the basis that they were unreasonable.

[18] MEG also asserted that the decisions should be set aside on procedural fairness and bias grounds. I summarize MEG's objections of this nature in the following paragraphs.

[19] Section 38 of the *MMA* imposes a time limit to complete the audits. The Minister can extend any time limit under the *MMA* pursuant to s. 8 thereof. In the present case, the audits were not completed within the times imposed by s. 38. The Minister extended them, but the government did not inform MEG of the extensions.

[20] MEG submitted the audits were unreasonable or conducted in a procedurally unfair manner because they were not conducted or completed within the times prescribed by s. 38 of the *MMA*:

> (i) The Ministerial Orders extending the time limitations pursuant to s. 8(1)(g) of the *MMA* were invalid.
>
> (ii) AEA breached procedural fairness requirements owed to MEG by failing to inform it that Ministerial extension orders would be requested or were made.

[21] MEG further asserted that AEA and the Director treated MEG unfairly by relying on prior audit decisions relating to other operators without disclosing them to MEG and allowing it an opportunity to respond.

[22] MEG further asserted that the Director treated MEG unfairly or was biased or created reasonable apprehension of bias by consulting AEA without MEG being informed or having an opportunity to respond, and by having AEA "pre-screen" the Director's final determinations.

IV Findings in the judicial review

(a) The failure to complete the audits within statutory time periods

[23] I found the Ministerial Orders extending the s. 38 time limits were not invalid by reason of failure to publish or promulgate them because there is no general legal requirement to publish such specific administrative orders.

[24] I noted the orders may be set aside if they were not made in compliance with any applicable requirements of procedural fairness owed to MEG in respect of making them. Further, the audits may be set aside if the manner of obtaining the orders or failing to notify MEG of the orders violated procedural fairness obligations in sufficiently serious circumstances to justify setting aside the process.

[25] I found that the mere failure to provide MEG input into the highly discretionary extension decision did not amount to unfairness or breach of natural justice. Although MEG did not have the right to be informed of Alberta Energy's intention to make or request the extension orders, I agreed with MEG that procedural fairness required Alberta Energy to inform MEG of the extension orders promptly after they were made.

[26] I found that Alberta Energy's failures to inform MEG of the orders was a breach of procedural fairness obligations, but in the circumstances of this case the failures were non-prejudicial omissions that were not sufficiently serious to justify setting aside the audit determinations.

[27] I further found that MEG's conduct in participating without objection in the audits after the statutory time periods had passed constituted acquiescence or implied waiver to any objection that the audits were not completed in time.

(b) Non-disclosure of determinations in other audit files

[28] I agreed with the Crown's submission that AEA referenced other files in a general sense in seeking to consistently apply legislation and policy in the audit and did not consider themselves bound by the other file decisions.

[29] I agreed with the Crown that the Director did not rely on the past decisions as precedent in deciding the issues.

[30] I concluded that AEA and the Director were not under a procedural duty of fairness to disclose the general details of past royalty audits except in exceptional circumstances.

[31] I observed that exceptional circumstances exist where a prior decision represents well established precedent or internal authority and the decision maker proposes to depart from it.

[32] I found there were no such circumstances requiring AEA to disclose prior decisions.

[33] I found the Director departed from a prior decision concerning the cost of Diluent Tanks which represented established internal authority. I found the Director had a duty to disclose reasonable particulars of that decision before departing from it.

[34] I found that the circumstances did not establish that the Director breached this duty. The Director disclosed a heavily redacted copy of the prior decision to MEG. I found that the copy provided to MEG was sufficient for MEG to make additional submissions in support of its objection if it saw fit, such as demanding other available records if required.

[35] I found that MEG was not treated unfairly by AEA or the Director in respect of non-disclosure of previous decisions in other files.

(c) Director's consultations with AEA

[36] The Director had discussions with AEA representatives in MEG's absence. MEG asserted these were breaches of procedural fairness obligations and evidence of bias/reasonable apprehension of bias.

[37] I concluded that a relatively low standard of procedures is required in the audit process. I stated the Director may communicate with the auditors and others within the Department of Energy to understand and test the audit reasoning and for assistance in accessing and navigating the voluminous audit files. An important caveat is that should the inquiries generate new information outside the boundaries set by ss. 4(2) of the *Mines and Minerals Dispute Resolution Regulation*, Alta Reg 170/2015 or uncover an additional reason or rationale for an audit conclusion that is not apparent from the auditors' reasons, then the Director is duty bound to inform the operator and give it a fair opportunity to respond.

[38] I concluded that the Certified Record did not suggest that the Director's inquiries generated new matters that would attract a duty to allow MEG further input and response.

[39] I further rejected MEG's submission that the process operated in a procedurally unfair manner.

[40] I noted that the Certified Record contained an agenda of the Director's meeting with AEA, but no minutes of their discussions. I stated, with extensive citations from ***James Richardson International Ltd v Canada***, 2004 FC 1577, app dism 2006 FCA 180, that such gaps in record keeping leave the Director open to allegations of unfairness or bias, in situations where the record justifies an inference that new factual information, evidence, or additional reasons from AEA may have been received *ex parte* and not disclosed to MEG.

[41] However, I concluded on the record before me that there was no reason to infer or even suspect that the Director obtained new information, submissions or reasons from AEA that were not disclosed to MEG. Rather, I stated, the Director merely communicated with the subordinate decision maker to understand the audit and access information from the voluminous record.

[42] I concluded the Director's conduct of the process in this particular case on this specific record did not give rise to unfairness (or indication of bias or reasonable apprehension of bias).

(d) Lack of independence and bias issues

[43] MEG's assertions of bias or related issues, largely relied on such things as the decision makers changing their views during the audit process, failing to accept MEG's positions, or communicating amongst themselves.

[44] I found that circumstances did not demonstrate lack of impartiality or reasonable apprehension of bias on the part of AEA or the Director. As mentioned above, I recognized that the Director leaves himself open to bias and unfairness allegations when he conducts his review without minuting or recording the internal communications but on the record before me in this specific case there was no basis to infer or suspect such misconduct.

(e) Whether AEA and the Director unreasonably decided that fair market value of the Stonefell Terminal services could not be determined.

[45] I rejected this ground as extensively addressed in the Reasons.

(f) Whether AEA and the Director unreasonably decided that the non-basic pipeline rate of return on capital (the rate preferential to MEG) did not apply in a cost of service calculation for Stonefell Terminal.

[46] I rejected this ground as extensively addressed in the Reasons.

(g) Whether AEA and the Director unreasonably refused to permit the deduction of the cost of the Diluent Tanks.

[47] I found that the Director's reasons for refusing the Diluent Tank costs were not transparent or intelligible on the questions whether certain categories of cost eligible for deduction in the royalty calculation under the regulations ("handling charges" or "specifically included costs") covered the cost of the Diluent Tanks.

[48] Further, I noted that where "a decision maker does depart from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons" (***Canada (Minister of Citizenship and Immigration) v Vavilov,*** at para 131, underlining added).

[49] MEG submitted, during the objection proceedings before the Director, a prior decision in its favour. The Director found this decision was incorrectly decided and refused to apply it in MEG's favour. It appeared from the Certified Record that the decision or a substantially similar decision in another audit of a 2013 statement was arrived at by AEA after "significant consultation" (Certified Record, Tab 283).

[50] I found that Director ought to have explained the rationale for the prior decision and explain why it was wrong or appropriate to depart from it.

[51] I concluded that in all the circumstances, the decision to refuse the Diluent Tank costs was not sufficiently explained and for that reason, unreasonable. I found this matter severable from the other issues and remitted it for redetermination.

V Costs of the judicial review

(a) Introduction

[52] The Respondent Alberta submits it was substantially successful on the judicial review and should be awarded costs. The Court has discretion to apportion costs by issue in appropriate cases. Alberta submitted it should recover 80% of its costs. Costs should be assessed on Schedule C, column 5 times 2, on the basis of a complex chambers application where the Court may apply the costs relating to an appearance before the Appeal Court.

[53] MEG submits that where the Court finds a breach of procedural fairness obligations but does not issue a remedy, the Court should not award costs to the party in breach. Further, MEG was successful on some issues – one of its breach of procedural fairness arguments and the set aside of the decision to refuse costs of the Diluent Tanks. The parties should bear their own costs. If Alberta is awarded costs, then they should be split 80/20 between the parties. They should be quantified on the basis of 1 times column 5, item 8 without applying costs of an appearance before the Appeal Court.

[54] Both parties relied on Schedule C to assess the quantum of any costs awarded, as opposed to a proportion of solicitor and client costs under the principles in ***McAllister v Calgary (City)***, 2021 ABCA 25, ***Barkwell v McDonald (#1***), 2023 ABCA 87, and ***Barkwell v McDonald (#2)***, 2023 ABCA 183. Neither submitted that the Court should attempt to apply the ***McAllister*** approach. MEG did not disclose its solicitor-client accounts. Alberta's counsel are salaried lawyers in Alberta Justice and presumably do not generate solicitor-client accounts.

(b) Summary of costs principles

[55] The primary purpose of a costs award is to partly indemnify the successful party for the costs of the litigation. Costs awards also achieve other purposes: they can be used to encourage settlement, prevent frivolous, vexatious or harassing litigation, and encourage economy and efficiency during litigation (***Hogarth v Rocky Mountain Slate Inc***, 2013 ABCA 116 at para 8).

[56] A successful party to an application, a proceeding or an action is entitled to a costs award against the unsuccessful party, subject to a variety of considerations including the Court's general discretion under Rule 10.31 (*Alberta Rules of Court*, Rule 10.29). An award of costs is the "prima facie entitlement of the successful party, but that entitlement may not always obtain" (***McAllister v Calgary (City)***, 2021 ABCA 25 at para 21).

[57] Where success is mixed to the extent that it cannot be said that one party was "substantially successful", no order should be made as to costs and the parties will bear their own costs (***Clarke v Syncrude Canada Ltd***, 2014 ABQB 430 at para 12). However, the Court has discretion to apportion by issue in appropriate cases (***Mahe v Boulianne***, 2010 ABCA 74; ***Clarke*** at para 13). The Court has broad discretion in deciding costs, having regard to the factors mentioned in Rule 10.33(1) and (2) (***Rysdyk v Slaney***, 2023 ABKB 5 at para 18). A court could apportion where, having regard to such factors, it is just and fair to do so (***Viridian Inc v Dresser Canada Inc***, 2001 ABQB 733 at para 30; ***Clarke*** at para 31). An important (but not exclusive) consideration is whether "separate issues are easily definable and severable" (***Portugal Cove-St Phillips (Town) v Willcott (1997)***, 1997 CanLII 14702 (NL CA), 150 Nfld & PEIR 183, NJ No 118 (CA) at para 15). Such apportionment was refused where the issue did not lengthen or complicate the proceedings (***Parrish & Heimbecker Ltd v All Peace Auctions Ltd***, 2002 ABQB 602).

[58] MEG cites ***Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board***, 1994 CanLII 114 (SCC), [1994] 1 SCR 202 in support of its submission that I should refuse costs to Alberta, because I found Alberta had breached an obligation of procedural fairness and expressed concerns over the manner in which the Director conducted his interactions with members of AEA.

[59] In ***Mobil Oil***, the applicant companies ("Mobil") sought to compel the Canada-Newfoundland Offshore Petroleum Board to consider Mobil's application, made in 1990, for a significant discovery declaration (SDD) comprising 25 sections of offshore properties based on the results of an offshore well drilled in 1982. The well had been the subject of an earlier SDD application brought in 1984 and granted in part in 1986. The Chairperson of the Board found that the application must be supported by the results of a fresh well and refused to refer the matter further to the Board including an oral hearing before the independent Oil and Gas Committee.

[60] The Court found that the Board had jurisdiction to reject Mobil's 1990 application on a preliminary basis, without permitting a Committee reference for technical input. The requirement of drilling results from a new well was a question of law for which the Board did not require input from the Committee. However, the Court observed, “this does not mean that rejection could properly have occurred without regard for fairness or the principles of natural justice”.

[61] The Court found that procedural fairness required that Mobil have the opportunity of a hearing concerning the statutory interpretation issue whether its application must be supported by additional drilling results. Mobil had not received an opportunity to make its novel interpretation argument. Consequently, its rights to procedural fairness were breached.

[62] Nevertheless, the Court refused to grant a remedy. The Court found that the 1990 application could not have succeeded as a matter of law. The law clearly required that the application be supported by the results from the drilling of an additional well. The outcome was therefore inevitable – Mobil’s 1990 application would fail.

[63] The Court directed that both parties bear their own costs because:

> .... the companies put forward an interpretation of the offshore scheme -- particularly with respect to the Board/Committee relationship -- which I have at least partly recognized in these reasons, and I have noted that Mobil Oil was not treated fairly on the facts. For these reasons, it is appropriate that each party bear its own costs, both in the courts below and before this Court.

[64] Turning to principles of quantification, the overarching requirement is to fix amounts that are reasonable and proper having regard to the relevant factors in Rule 10.31 and 10.33.

[65] As mentioned, neither party submitted the ***McAllister*** approach should apply or provided submissions of what amount of a solicitor-client account would be reasonable and proportionate for the opposing party to bear.

[66] Schedule “C” remains a useful tool in assessing the quantum of costs (***Barkwell (#1)*** at para 53) and provides a rough measure (*ibid* at para 57). It can also serve as a fallback where information about solicitor-client accounts is not provided or available (***Kantor v Kantor***, 2023 ABCA 329 at para 14). There is a wide variety of choices of columns and multipliers, and the costs must be determined having regard to the factors in Rule 10.33.

(c) Costs determination

(i) Whether to deprive Alberta of costs due to procedural fairness or similar matters

[67] I do not agree with MEG that the single instance of procedural unfairness that did not merit a remedy is a basis to refuse costs to Alberta.

[68] The breach was in failing to inform MEG that the Minister had extended the statutory time periods in which to complete the audits. I denied a remedy because the breach of procedural fairness was non-prejudicial and not sufficiently serious to merit a remedy. As to prejudice, MEG did not lead any evidence to explain how it was prejudiced and I found that its assertions that it believed its liabilities were fixed upon expiry of the statutory time periods “strains credulity and I refuse to accept such a representation without affidavit evidence, of which there is none” (Reasons, para 188). I further found that MEG continued to participate in the audits

following expiry of the statutory time periods, resulting in waiver of the alleged defect (Reasons, para 193).

[69] In ***Mobil Oil***, there was a serious breach of procedural fairness. The Supreme Court of Canada observed that Mobil was not treated fairly on the facts, characterized Mobil's point of law as "novel", and observed that some of Mobil's interpretation arguments were accepted by the Court.

[70] These circumstances in ***Mobil Oil*** are far different than the present case.

[71] The breach of fairness in the present case was not sufficiently serious to support the remedy that MEG sought. Absent any evidence of prejudice and given that on MEG's own admissions it continued to participate in the audits when it must have believed the time periods had expired, MEG's claim to a remedy for the breach was unconvincing.

[72] Further, MEG pursued a wide range of issues, in comparison to ***Mobil Oil*** where the issues were narrow and well focussed. MEG failed on all the other procedural fairness issues, all the bias/reasonable apprehension of bias issues, and most of the substantive issues concerning the reasonableness of the decisions under review. Alberta was put to a considerable amount of effort in responding to this wide variety of unsuccessful arguments.

[73] Costs serve a variety of objectives, including indemnification and encouraging settlement, economy and efficiency including narrowing issues. Costs should be awarded against MEG notwithstanding my finding of a minor breach of procedural fairness that did not justify overturning the lengthy, cost intensive audit process by AEA in which MEG participated throughout. Alberta incurred significant effort defending these allegations and was largely successful. It would be unjust to refuse Alberta indemnity in these circumstances.

[74] In coming to these conclusions, I am mindful of my comments that the Director risked allegations of unfairness and bias when he communicated with AEA personnel without documenting the discussions. MEG suggests that in light of these comments, Alberta should be refused costs.

[75] My comments were directed at encouraging the Director to consider a more conservative practice in future. While I do not encourage such undocumented interactions, there is also a presumption of integrity on the part of the decision maker. The record was bereft of evidence that would justify an inference that the Director 's interactions were improper. Alberta should not be deprived of indemnity having successfully refuted such allegations.

(ii) Costs awards

[76] Alberta was successful on almost all the issues and most of the audit decisions were sustained. Nevertheless, MEG succeeded in setting aside one of the audit determinations. While all the determinations shared the same background facts, the validity of the Diluent Tank cost determination was a separate and easily definable issue. It previously held it was severable for remedial purposes (Reasons, para 442).

[77] MEG was put to additional effort to obtain a remedy in respect of these costs. It is fair and just in this case to apportion costs. I do not agree with MEG that the allocation should be 50/50. Far more time and effort were spent on the other issues. The allocation proposed by Alberta (80/20) reflects that most of the time and attention was focussed on the issues on which Alberta succeeded. I apply Alberta's proposed allocation.

[78] Turning to quantification, the default column that applies in judicial reviews is column 1. However, in many judicial review cases column 1 would be inadequate and it is not uncommon to select a higher column (***Kissel v Rocky View (County)***, 2020 ABQB 570 at para 8 and authorities cited therein).

[79] In setting the costs columns and multipliers (if any) the Court considers the factors in Rule 10.33(1) and the grouping of the considerations set out in ***Lum v Alberta Dental Association and College***, 2015 ABQB 276 at para 9 and ***Kissel*** at para 10.

[80] Column 1 does not adequately reflect the effort and expense reasonably required and incurred in the present case given the numerous issues raised in the judicial review, the complexity of the matters, the enormity of the audit record, and the significant amounts of money in issue should the review succeed.

[81] Having regard to the ***Kissel*** case cited to me and the review of other cases therein, and also being aware of the recent decision of Lema J in ***Lehodey v Calgary (City)***, 2025 ABKB 76 and the case law review therein, I conclude that reasonable fees should be based on column 5, and that item 8 should be adjusted for a complex chambers application by applying the costs categories for an appearance in the Appeal Court.

(a) The very technical and detailed provisions of the regulatory regime, spanning across the *MMA*, the *ACR*, and the *OSRR2009* are voluminous and complex. As described in my Reasons, some of MEG's deductible costs might fall into more than one costs category under the regulations. There is little case law or regulatory precedent interpreting or applying the provisions to terminal operations, against which the reasonableness of the decisions might be assessed.

(b) There is little case law pertaining to procedural fairness in the conduct of the audits.

(c) The answers to the issues, both procedural and substantive, were important not only to the parties but likely also to other oil sands royalty payors.

(d) MEG asserted that the direct increases in the royalties and the indirect cost resulting from accelerating MEG's timeframe to payout was just over $15,000,000 (MEG's written submissions on the judicial review, para 21), being substantially in excess of the threshold for column 5 (being $2,000,000).

(e) The certified record and written briefs were voluminous, and the verbal submissions were lengthy. Significant preparation time would have been required to prepare the briefs and prepare for the hearing.

(f) The foregoing adds up to significant stakes for the parties and for the industry, justifying the significant effort that was obviously applied to formulate and present the submissions.

(g) Assessing reasonableness also requires the Court to consider that the judicial review is conducted on the certified record not testimony and is a relatively short hearing as compared to a trial (***Lum*** at para 34). I would therefore decline to apply a multiple to column 5.

[82] Both sides appeared with second counsel. Alberta submitted the Court apply item 20 as permitted by item 8 for complex chambers applications, and item 20 permits the Court to allow a

second counsel fee in appropriate cases. MEG submitted item 8 applies, and did not include a second counsel fee in its calculations.

[83] The need to have second counsel present in an appeal is much smaller in a trial court as the evidence and arguments are known in advance (***Viridian Inc v Dresser Canada***, 1998 ABCA 275 at para 6). However, there are examples where second counsel was awarded in complex cases (see, eg, ***Hanke v Resurfice Corp***, 2006 ABCA 116 at para 3) and where the issues were important and both sides had second counsel attend (***Mammoet 13220-33 Street NE Limited v Edmonton (City***), 2014 ABCA 348, where ½ of second counsel fee was awarded).

[84] The issues were sufficiently important and complex to merit the appearance of two counsel. MEG's counsel may have needed quick assistance in accessing information from the voluminous Certified Record while making submissions. In Alberta's case, the verbal submissions were divided between two counsel.

[85] Alberta claims a fee for item 3(1) – Disclosure of records. MEG submits that this item does not apply in a judicial review.

[86] Tribunals whose decisions are under review in this Court are obliged to deliver their Certified Record. Tribunals typically take a limited role in the proceedings, if they appear at all. I am not aware of a practice that tribunals are usually compensated in costs for assembling their records. The fact that Alberta Justice may have undertaken or participated in the process of routine assembly of the record in the present case for the AEA and the Director should not lead to a different result.

[87] The Court can nevertheless adjust the costs award to account for review of the certified record (***Kissel*** at para 48). Column C allows for review of an opposing party's records (item 3(2)) and by analogy there should be a fee for parties to review the certified record in complex cases. Both sides should receive their share of costs for the necessary reviewing of the certified record in this case, particularly given its magnitude.

[88] I agree with MEG that Alberta should not awarded item 1(1) (Commencement documents, affidavits, pleadings and related documents and amendments). Alberta did not incur such costs.

[89] Applying Schedule C with the above adjustments yields the following:

Item no.	Item	Col 5 Alberta (80%)	Col 5 MEG (20%)
1(1)	Pleadings	--	945
	Review of certified record	1620	405
8(1)	Complex chambers application – Appeal Court scale 19(1) – written brief	8640	2160
	19(2) – all other preparation	4320	1080

	20(a) – first ½ day, lead counsel	3240	810
	20(b) – first ½ day, second counsel	1620	405
	21(a) – second ½ day, lead counsel	1728	432
	21(b) – second ½ day, second counsel	864	216
	Total	22032	6453

[90] In ***Kissel*** at para 37, I commented that a mid range amount for an approximate one-day judicial review in a case with important issues but not a complex record, would be about 3 times column 3, yielding $17000 to $18000. My calculation in the present case yields total fees of about $28500 split between the parties. The amount is reasonable partial indemnity for a complex one-day judicial review on a voluminous record with important questions and large amounts directly in issue.

[91] The parties will add proper disbursements and recoverable "other charges" if any, and MEG may add GST to its fees if appropriate. The parties will then set off the totals and provide the net amount owing to Alberta in the formal order.

[92] If they cannot finalize the remaining calculation, they can be in touch with me. Otherwise, they will submit a form of order approved by each.

Heard by written submissions, May 30, 2025 (Alberta) and June 13, 2025 (MEG).

Dated at the City of Calgary, Alberta this 15th day of August, 2025.

JT Eamon
J.C.K.B.A.

Appearances:

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for the Applicant

D Mueller KC and H Yamamoto, Alberta Justice
for the Respondents